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CALIFORNIA CONSTITUTIONAL PROVISIONS

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CALIFORNIA CONSTITUTIONAL PROVISIONS

ARTICLE XI

LOCAL GOVERNMENT

SEC. 11. **Legislature may not delegate power of municipality to tax.** (a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

(b) The Legislature may, however, provide for the deposit of public moneys in any bank in this State or in any savings and loan association in this State or any credit union in this State or in any federally insured industrial loan company in this State and for payment of interest, principal and redemption premiums of public bonds and other evidence of public indebtedness by banks within or without this State. It may also provide for investment of public moneys in securities and the registration of bonds and other evidences of indebtedness by private persons or bodies, within or without this State, acting as trustees or fiscal agents.

History.—New section added by amendment adopted 1970 which also repealed Section 13 of Article XI containing similar provisions. The amendment of November 5, 1974 added the subdivision letters and subdivision (b). The amendment of June 8, 1976, added "or in any savings and loan association in this state" after "state" in the first sentence of subdivision (b). The amendment of November 8, 1988, added "or any credit union in this State or in any federally insured industrial loan company in this State" after "savings and loan association in this State" in the first sentence of subdivision (b).

Delegation of taxing power.—Boards of directors of metropolitan water districts are in the same sense governing officials thereof as are the city councils or boards of trustees of such other governmental agencies as have heretofore been invested with powers and duties of a quasi-municipal character. Therefore, it cannot be said that the Metropolitan Water District Act (Stats. 1927, p. 694) is unconstitutional as delegating the power of municipal taxation to a special commission or board. *City of Pasadena* v. *Chamberlain,* 204 Cal. 653.

This section is a restraint merely upon the Legislature and an appropriation by a county to a city for street improvements is not within its prohibition. *City of Oakland* v. *Garrison,* 194 Cal. 298.

The object of this section was to emancipate municipal governments from the authority formerly exercised over them by the Legislature. *In re Pfahler,* 150 Cal. 71.

For other cases upholding a delegation of power as not being in violation of this section see *Henshaw* v. *Foster,* 176 Cal. 507 (upholding an act, Stats. 1915, p. 921, enabling the inhabitants of a region, including cities, to form an irrigation district and to elect their own taxing board to raise funds for district purposes); *Byington* v. *Sacramento Valley etc. Canal Co.,* 170 Cal. 124 (upholding the Irrigation District Act of 1901, Stats. 1901, p. 815, permitting the directors of an irrigation district to lease its system of canals and works); *Banaz* v. *Smith,* 133 Cal. 102; and *City of Los Angeles* v. *Teed,* 112 Cal. 319.

Legislative power is not delegated under the Wright Act through the enactment of conditions upon the performance of which an irrigation district is organized within boundaries fixed by a board of supervisors after a hearing and upon a vote of electors. *Fallbrook Irrigation District* v. *Bradley,* 164 U.S. 112.

The Metropolitan Water District Act (Stats. 1927, p. 694) does not violate this section by permitting the appointive board of directors of the district to levy taxes. *In re Metropolitan Water District of Southern California,* 215 Cal. 582.

The provisions of Section 3719 of the Political Code, making the repayment of tax anticipation notes a first lien against taxes, revenue and other income of the county collected during the fiscal year, is not invalid as constituting an attempted delegation of power by the Legislature to the purchaser of notes to control and interfere with county money in violation of this section. Regardless of the lien provision, the remedy would be mandamus to the proper officers, to compel payment of the notes out of the charged funds. *Los Angeles County* v. *Legg,* 5 Cal.2d 349.

Revenue and Taxation Code Section 5096, as construed to authorize the county to appear and defend suits for refund of taxes in behalf of other entities whose taxing functions have been consolidated with those of the county, does not violate this section. *Los Angeles County* v. *Superior Court,* 17 Cal.2d 707.

Authorization by the Legislature to an irrigation district to annex or include additional land in the district is not unconstitutional under this section even though one incidental result of such annexation or inclusion may be the exemption of the additional land from taxation. *County of Mariposa* v. *Merced Irrigation District,* 32 Cal.2d 467; *County of Tuolumne* v. *Oakdale Irrigation District,* 32 Cal.2d 891; *Calaveras County* v. *Oakdale Irrigation District,* 32 Cal.2d 890; *Vista Irrigation District* v. *Board of Supervisors of San Diego County,* 32 Cal.2d 477.

Districts.—On the subject of districts as governmental agencies, see *Stuckenbruck* v. *Board of Supervisors,* 193 Cal. 506; *Wores* v. *Imperial Irrigation District,* 193 Cal. 609; *Henshaw* v. *Foster,* 176 Cal. 507; *People* v. *Sacramento Drainage District,* 155 Cal. 373; *Argyle Dredging Co.* v. *Chambers,* 40 Cal.App. 332.

SEC. 12. **Claims against cities and counties.** The Legislature may prescribe procedures for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees.

History.—New section added by amendment adopted June 2, 1970.

SEC. 14. **Property taxation by local governments whose boundaries include area in two or more counties.** A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax.

History.—New section added by amendment adopted November 2, 1976.

ARTICLE XIII

REVENUE AND TAXATION

[Sections 1 through 33 added by amendment adopted November 5, 1974.]

SECTION 1. **Taxable property.** Unless otherwise provided by this Constitution or the laws of the United States.

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

Construction.—Article XIII A of the Constitution did not repeal or in any way alter the provisions of Article XIII pertaining to taxation according to fair market value. *State Board of Equalization* v. *Board of Supervisors*, 105 Cal.App.3d 813; *Shellenberger* v. *Board of Equalization of San Joaquin County*, 147 Cal.App.3d 510.

Article XIII A replaces the fair market value standard with that of acquisition value for assessment purposes. Under said Article XIII A, the assessment ratio is the percentage of assessed value to full value, and although full value was once synonymous with fair market value, such is no longer the case. *R. E. Hanson, Jr. Mfg.* v. *Los Angeles County*, 27 Cal.3d 870.

Self-Executing.—The assessor's duty to assess escaped property upon discovery is one which is imposed upon him not only by statute but by the self-executing provisions of this section requiring uniformity of assessments. *California Computer Products, Inc.* v. *Orange County,* 107 Cal.App.3d 731; *General Dynamics Corporation* v. *San Diego County,* 108 Cal.App.3d 132.

(A) TAXES

Note.—This section applies only to taxes, both general and special, and has no application to special assessments. *Turlock Irrigation District* v. *Williams,* 76 Cal. 360; *Emery* v. *San Francisco Gas Co.,* 28 Cal. 345. There is a well defined distinction between special and general taxes, and between taxes and special assessments.

General taxes are levies imposed on all the property within the jurisdiction of the taxing agency for ordinary governmental purposes; no special benefit to the taxpayer need be shown, nor need the revenue be spent only for particular governmental functions.

Special taxes are like general taxes except that they are levied for a designated purpose upon all property within a certain district. The fact that some property benefits more than other property does not prevent the levy from being a tax. *Anaheim Sugar Co.* v. *Orange County,* 181 Cal. 212; *Joint Highway District* v. *Hinman,* 220 Cal. 578, 586. A special tax, as defined in Article XIII A, Section 4 of the Constitution, is a tax levied for a specific purpose, rather than a levy placed in the general fund to be utilized for general governmental purposes. One characteristic of a special tax is that it levies a fee to replace revenue for services that were affected by Article XIII A. *Carlsbad Municipal Water District* v. *QLC Corporation,* 2 Cal.App.4th 479; *Ehrlich* v. *City of Culver City,* 15 Cal.App.4th 1737. A special tax, for purposes of Article XIII A, Section 4 of the Constitution, is a tax levied to fund a specific governmental project or program and must be distinguished from regulatory fees imposed under the police power. *City of Dublin* v. *Alameda County,* 14 Cal.App.4th 264. A ''special'' tax is one levied to fund a specific government project or program, such as education, and any tax levied by a special purpose district or agency is a ''special tax.'' *Hoogasian Flowers, Inc.* v. *State Board of Equalization,* 23 Cal.App.4th 1264. *Howard Jarvis Taxpayers' Assn.* v. *City of San Diego,* 72 Cal.App.4th 230. A special tax is a tax collected and earmarked for a special purpose, rather than being deposited in a general fund. *Riverside County Community Facilities District* v. *Bainbridge 17,* 77 Cal.App.4th 644.

Special assessments are not taxes in the constitutional sense at all, although sometimes spoken of as taxes but are levies upon real property in a district for the purpose of paying for improvements, the amount of the levy being based upon the benefits accruing to the property as a result of the improvements. *City of San Diego* v. *Linda Vista Irrigation District,* 108 Cal. 189. A special assessment is a charge imposed on particular real property for a local public improvement of direct benefit to that property. *Russ Building Partnership* v. *San Francisco,* 44 Cal.3d 839; *Pacific Gateway Assoc. Joint Venture* v. *San Francisco,* 44 Cal.3d 839; *Crocker National Bank* v. *San Francisco,* 44 Cal.3d 839; *Kern County Builders, Inc.* v. *North of the River Mun. Water Dist.,* 214 Cal.App.3d 805; *Evans* v. *City of San Jose,* 3 Cal.App.4th 728. A special assessment is a compulsory charge placed by the state on real property in a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein. *Southern California Rapid Transit Dist.* v. *Bolen,* 1 Cal.4th 654; *Knox* v. *City of Orland,* 4 Cal.4th 132. *Howard Jarvis Taxpayers' Assn.* v. *City of San Diego,* 72 Cal.App.4th 230.

Whether a particular charge is a special tax or special assessment is not governed by the designation thereof in the statute providing therefor, but is governed by the nature of the imposition. *People* v. *Austin,* 47 Cal. 353.

The main differences between special taxes and special assessments may be summarized as follows:

First, special taxes are levied on all the property, both real and personal, within the district subject to the tax; whereas, assessments are levied only on real property; secondly, the rate of a tax levy must be uniform on all of the taxable property of the district, whereas, the rate of a special assessment may be uniform but generally varies, as it is supposed to be proportionate to benefits received. *Wells* v. *Union Oil Co.,* 25 Cal.App.2d 165, 166.

Senate Bill 1, Ch. 24, Stats. 1978, in effect March 3, 1978, amended various provisions of the Revenue and Taxation Code and the Government Code. However, this bill was repealed due to the passage of Proposition 13 (Article XIII A) and the failure of Proposition 8 on the June 6, 1978 ballot.

(B) UNIFORMITY REQUIREMENT

Construction.—The Legislature has no power to exempt any property from taxation *(Mackay* v. San Francisco, 113 Cal. 392), nor may it impose additional taxes on any property. *Fatjo* v. *Pfister,* 117 Cal. 83; *Spring Valley Water Co.* v. *Alameda County,* 24 Cal.App. 278. The Legislature may not grant an exemption from property taxation unless authorized to do so by the Constitution. *Connolly* v. *Orange County,* 1 Cal.4th 1105. Government Code Section 26912 and former Revenue and Taxation Code Section 2237, now Revenue and Taxation Code Sections 93 and 95 et seq., which were enacted to implement Article XIII A of the Constitution and under which counties could levy the 1 percent property tax allowed under Article XIII A and distribute the revenues to local agencies but only to those agencies that levied a property tax during the 1977–78 fiscal year, did not violate the uniformity provisions of this section. Those provisions require that all property in the state be taxed in proportion to its value, and they are mandatory. However, under the challenged legislation, the county was the sole taxing entity, and it imposed a uniform tax rate on all real property. Thus the distribution of tax revenues under those statutes did not violate the uniformity requirement. *City of Rancho Cucamonga* v. *Mackzum,* 228 Cal.App.3d 929.

There was no violation of this section when the directors of a joint highway district allocated 90 percent of the cost of certain construction work to one county and 10 percent to the other. *Joint Highway District* v. *Hinman,* 220 Cal. 578. The cancellation of delinquent taxes on lands within a special assessment district pursuant to a plan for refunding the indebtedness of the district and in consideration of a reduction in the indebtedness has been held not to violate this section. *San Bernardino County* v. *Way,* 18 Cal.2d 647. Cf. *Redman* v. *Weisenheimer,* 102 Cal.App. 488, holding invalid a tax levied upon the property in only four of the five school districts comprising a union district, and *Wilson* v. *Supervisors,* 47 Cal. 91, holding that the uniformity requirement of the 1849 Constitution prohibited the remission of taxes upon certain of the property within a district.

Section 987 (repealed by Stats. 1949, p. 2573) of the Revenue and Taxation Code, which provides for the taxation of only the possessory interest of a purchaser of land from the Veterans Welfare Board under a contract whereby the board retains title only for security purposes, is invalid under this section for the purchaser is the owner for tax purposes and the property must be taxed to him in proportion to its value. *Eisley* v. *Mohan,* 31 Cal.2d 637.

The fact that the assessed value of certain property was reduced by allegedly illegal actions of a county board of equalization and the board of supervisors after adjournment of the board of equalization does not deprive another taxpayer whose assessment was not similarly reduced of the uniformity of taxation guaranteed by this section and the equal protection clause of the Federal Constitution where the taxpayer did not allege or prove that his property was similar in character or situation to the property reduced; or that his property was overvalued, or the reduced property undervalued by the reductions. *Crothers* v. *Santa Cruz County,* 151 Cal.App.2d 219. Claimed lack of uniformity required by this section due to denial of a claim for refund for property taxes because of failure to exhaust administrative remedy is meritless. Any lack of uniformity was due to taxpayer's failure to comply with the requirements of the assessment appeal process. *Sea World, Inc.* v. *San Diego County,* 27 Cal.App.4th 1390.

Equalization relates to the entire county and not just a small portion assessed at a lower figure than any individual taxpayer. That some property is assessed at a ratio lower than other property is not controlling, the test is not inequality as compared to neighboring property but inequality as compared to the county as a whole. *Best* v. *Los Angeles County,* 228 Cal.App.2d 655.

When unincorporated territory owned by one city is annexed into another city and the property was subject to taxation prior to its acquisition by the owning city, it is subject to taxation by the annexing city. *Barnett* v. *City of Alhambra,* 227 Cal.App.2d 411.

Value.—Property is not ''taxed in proportion to its value'' when the assessment is grossly excessive or discriminatory. Such assessments are constructively fraudulent, and relief against them will be granted by the courts. *Mahoney* v. *City of San Diego,* 198 Cal. 388; *Blinn Lumber Co.* v. *Los Angeles County,* 216 Cal. 468 and 474; *Los Angeles County* v. *Ransohoff,* 24 Cal.App.2d 238, Cf. *A. F. Anderson Estate, Inc.* v. *Payne,* 12 Cal.App.2d 530. An assessment based on a value that results in a tax equal to the costs of assessment and collection rather than based on recognized appraisal methods is not made ''in proportion to its value.'' *Red Bluff Developers* v. *Tehama County,* 258 Cal.App.2d 668.

Although the valuations placed on the various kinds of property must be in proportion to the worth of such properties, so that one class of property will not be more heavily taxed than any other class, it is not required that the assessments be at 100 percent of value. *Rittersbacher* v. *Board of Supervisors,* 220 Cal. 535.

The provision that state property be taxed in proportion to its value is mandatory. *McClelland* v. *Board of Supervisors,* 30 Cal.2d 124.

A special assessment for a sewerage system which exceeded the actual cost of the improvement so as to furnish revenue to the city was invalid for the property was not being taxed in proportion to its value. *City of Los Angeles* v. *Offner,* 55 Cal.2d 103.

In assessing timberland, the factors of accessibility, terrain, species, quality, logging conditions, and distance from market are influenced to some degree by the size of contiguous parcels held in a single ownership. However, a system of discounts applied to total timber in the county held in single ownership, and not limited to that located on contiguous lands, constituted an unlawful, discriminatory assessment practice. *Jones Lumber Co.* v. *Del Norte County,* 251 Cal.App.2d 645. (Cert. denied, 389 U.S. 1015.) Subsequent to the board's adoption of rule 41 (a regulation governing the valuation of timber), the court held on similar facts that the assessor's valuation was valid where the quantity of timber owned by a taxpayer was one of many factors used by the assessor in converting the immediate harvest value of the timber to market value. *Jones Lumber Corporation* v. *Brickwedel,* 274 Cal.App.2d 680.

A cost-less-depreciation method of valuation must be so designed that the cost factors are modulated by the depreciation factors in a manner reasonably calculated to achieve full value with respect to the particular property being assessed. *Bret Harte Inn, Inc.* v. *San Francisco,* 16 Cal.3d 14.

Discrimination.—In absence of bad faith, discriminatory taxation is a question of fact to be resolved by the board of equalization, and a court will review its decision only to determine if it was based on substantial evidence. *Sacramento Municipal Utility District* v. *El Dorado County,* 5 Cal.App.3d 26.

Excise taxes not affects.—This section applies only to property taxes and not to excise taxes. Consequently, business license taxes (*City of Los Angeles* v. *Los Angeles Independent Gas Co.,* 152 Cal. 765; *Kaiser Land Etc. Co.* v. *Curry,* 155 Cal. 638; *McAdams Oil Co.* v. *City of Los Angeles,* 32 Cal.App.2d 359), fees charged applicants for dentistry licenses (*Matter of Application of Victor,* 27 Cal.App. 73), inheritance taxes (*Estate of Watkinson,* 191 Cal. 591), franchise taxes (*City Investments, Ltd.* v. *Johnson,* 6 Cal.2d 150), use taxes (*Douglas Aircraft Co., Inc.* v. *Johnson,* 13 Cal.2d 545), and income taxes (*Weber* v. *Santa Barbara County,* 15 Cal.2d 82) are not subject to the limitations imposed by this section.

But a municipal ''license fee'' exacted of every person ''owning'' a truck or taxicab is a property tax rather than an excise tax because it is imposed solely by reason of ownership, and it is therefore violative of this section. *Flynn* v. *San Francisco,* 18 Cal.2d 210. A city parcel tax to pay for governmental services and imposed upon every owner of real property in the city, without regard to the use of the property or the use of any city services, is not an ''excise tax'' despite that designation by the city but rather, is a property tax violative of this section because it taxes mere ownership of property. *Thomas* v. *City of East Palo Alto,* 53 Cal.App.4th 1084.

(C) EXEMPTIONS—PUBLIC PROPERTY

Express exemption not required.—Public property is not to be taxed unless there is express authority therefor. *Pasadena* v. County of Los Angeles, 182 Cal. 171; *State Land Settlement Board* v. *Henderson,* 197 Cal. 470; *Housing Authority* v. *Dockweiler,* 14 Cal.2d 437.

Scope of exemption.—A reclamation district is an agency of the state and its property is exempt from taxation. *Reclamation District No. 551* v. *Sacramento County,* 134 Cal. 477. Accord as respects a housing authority created

pursuant to Stats. Extra Session 1938, p. 9, and its property (*Housing Authority* v. Dockweiler, 14 Cal.2d 437) and an irrigation district and its property (*Glenn-Colusa Irrigation District* v. *Ohrt,* 31 Cal.App.2d 619), but note exception in the following paragraph as respects the land and improvements of an irrigation district located outside the district.

Land and improvements located outside a water district or irrigation district and subject to taxation at the time of acquisition by the district remain taxable inasmuch as a water or an irrigation district is a municipal corporation within the meaning of the exception provided by this section to the exemption of public property. *Metropolitan Water District* v. *Riverside County,* 21 Cal.2d 640; *Rock Creek Water District* v. *Calaveras County,* 29 Cal.2d 7, and *Imperial Irrigation District* v. *Riverside County,* 96 Cal.App.2d 402, 990, expressly overruling *Turlock Irrigation District* v. *White,* 186 Cal. 183 and *Laguna Beach County Water District* v. *Orange County,* 30 Cal.App.2d 740. See also *Waterford Irrigation District* v. *Stanislaus County,* 102 Cal.App.2d 839; *Vista Irrigation District* v. *San Diego County,* 98 Cal.App.2d 270; *Turlock Irrigation District* v. *Tuolumne County,* 124 Cal.App.2d 611.

The annexation to an irrigation district, upon petition of the district, of noncontiguous land owned by the district, located outside its boundaries and not susceptible of irrigation by the works of the district, and taxable at the time of it acquisition by the district is valid and the land thereby becomes exempt from taxation under this section. *Mariposa County* v. *Merced Irrigation District,* 32 Cal.2d 467; *County of Tuolumne* v. *Oakdale Irrigation District,* 32 Cal.2d 891; *Calaveras County* v. *Oakdale Irrigation District,* 32 Cal.2d 890; *Vista Irrigation District* v. *Board of Supervisors,* 32 Cal.2d 477; *Vista Irrigation District* v. *San Diego County,* 98 Cal.App.2d 270; *Oakdale Irrigation District* v. *Calaveras County,* 133 Cal.App.2d 127 (property owned jointly by two districts); *Rock Creek Water District* v. *Calaveras County,* 133 Cal.App.2d 141 (invalid proceedings cured by validating act). But any installments of tax on such annexed property due and paid prior to the completion of the annexation cannot be recovered. *Turlock Irrigation District* v. *Tuolumne County,* 124 Cal.App.2d 611. *Cf. City of Long Beach* v. *Board of Supervisors,* 50 Cal.2d 674, cited in the note hereunder entitled ''Effect on existing liens.''

Taxable property of a municipal corporation.—Under this section, as amended in 1914, improvements acquired by a municipal corporation outside its boundaries are not exempt from taxation by virtue of the fact that they are not located on taxable land. Thus, a water distributing system purchased by a city from a private corporation and lying in and under public roads and streets is subject to taxation. *Pasadena* v. *Los Angeles County,* 182 Cal. 171.

Water rights which have been acquired by a municipal corporation outside its boundaries are ''lands'' within the meaning of this section and are subject to taxation by the county in which they are located. *San Francisco* v. *Alameda County,* 5 Cal.2d 243; *Waterford Irrigation District* v. *Stanislaus County,* 102 Cal.App.2d 839; *Alpaugh Irrigation District* v. *Kern County,* 113 Cal.App.2d 286; *North Kern Water Storage Dist.* v. *Kern County,* 179 Cal.App.2d 268.

The purpose of the 1914 amendment being to protect from loss of taxable properties those counties in which municipalities acquired property for the operation of municipal projects, the exemption provision is confined to improvements which are wholly new and does not extend to substitutes for and replacements of improvements existing on property at the time of its acquisition by a municipality. *San Francisco* v. *San Mateo County,* 17 Cal.2d 814; *City of Pasadena* v. *Los Angeles County,* 37 Cal.2d 129.

Replacements of improvements on land located outside the corporate limits of a municipality, the land and improvements having been subject to taxation at the time of the acquisition thereof by the city, are taxable according to the current value of the replacements and not according to the current value of the improvements existing on the property when acquired. *City of Pasadena* v. *Los Angeles County,* 37 Cal.2d 129; *Sacramento Municipal Utility District* v. *County of El Dorado,* 5 Cal.App.3d 26. Where water rights located outside its boundaries are acquired by a city from private individuals, rather than from the State directly, such rights are taxable to the city since they were ''subject to taxation at the time of acquisition'' within the meaning of Article XIII, § 1 of the State Constitution. *Tuolumne County* v. *State Board of Equalization,* 206 Cal.App.2d 352.

The raising of the level of land by filling operations is an improvement within the meaning of this section. The inclusion of such an exempt improvement in an assessment of taxable lands is an error in classification which may be corrected by the State Board of Equalization upon application for review, equalization and adjustment pursuant to this section. Failure of the city to make such application precludes recovery of the tax assessed with respect to the exempt improvement. *San Francisco* v. *San Mateo County,* 36 Cal.2d 196.

City water rights did not escape assessment where the assessments for the years in question did not show that the water rights were excluded. An incorrect and excessive assessment on water rights results where the assessor fixed the assessment at an amount equivalent to 25 percent of the assessed value of the lot to which the water rights were formerly appurtenant, plus 25 percent of the assessed value of the improvements on such lot. *City of Los Angeles* v. *Inyo County,* 167 Cal.App.2d 736.

The situs of the water rights in question for taxation purposes was at the place of diversion, and the situs of such water rights cannot be changed by stipulation of the parties in the grant of those rights. Legislation attempting to exempt all water rights of a water storage district from taxation was invalid. *North Kern Water Storage District* v. *Kern County,* 179 Cal.App.2d 268.

Replacement of taxable improvements.—The issue as to whether changes to existing property are taxable ''replacements'' or nontaxable ''improvements'' is a question of law and an issue for the court independent of the decision of the State Board of Equalization. Where a municipal utility district purchased water rights and other properties, which were previously used for irrigation and domestic purposes, destroyed the old dam, and erected a larger dam, spillway, auxiliary dam, and dike, which it used for the generation of electricity, the erections were held to be a taxable ''replacement'' since the components all contributed to impounding the waters which had been impounded by the old dam. *Sacramento Municipal Utility District* v. *El Dorado County,* 5 Cal.App.3d 26; *City of Los Angeles* v. *Mono County,* 51 Cal.2d 843.

Tax-deeded property.—Property acquired by an irrigation district for delinquent assessments is exempt from taxation. It is immaterial whether such property is regarded as operative or nonoperative since this section requires only that the

property be owned by the State, and not that it be used exclusively for governmental purposes. In any event, the functions of an irrigation district are exclusively governmental, and all lands acquired by it are held solely for governmental purposes. *Anderson-Cottonwood Irrigation District* v. *Klukkert,* 13 Cal.2d 191. Accord, as to necessity of property being operative: *Glenn-Colusa Irrigation District* v. *Ohrt,* 31 Cal.App.2d 619. Cf. *Conley* v. *Hawley,* 2 Cal.2d 23, holding that property acquired by the State through delinquent tax sales was held by the State in its proprietary capacity and not for governmental purposes, and therefore was subject to street assessments.

Revenue and Taxation Code Sections 123 and 4102, in requiring one who has purchased delinquent property from a reclamation district to pay, as a condition to redemption, an amount equivalent to taxes on the property during the period it was owned by the district, do not violate this section. *Sutter-Yuba Investment Co.* v. *Waste,* 21 Cal.2d 781.

Effect on existing liens.—An irrigation district acquiring property which is subject to liens for taxes imposed by other governmental agencies is not entitled to a cancellation of such taxes by virtue of this section. *La Mesa, etc., Irrigation District* v. *Hornbeck,* 216 Cal. 730.

However, county tax liens on lands acquired by a city prior to and after the lien date are discharged upon annexation of the lands by the city within the tax year and the city may recover the taxes paid by it under protest. *City of Long Beach* v. *Board of Supervisors,* 50 Cal.2d 674.

Not applicable to special assessments.—This section has no application to assessments levied upon lands for the purpose of paying for specific local improvements upon the basis of benefits conferred. *City of San Diego* v. *Linda Vista Irrigation District,* 108 Cal. 189. There is, however, an implied exemption from such assessments in favor of publicly owned property provided the property is devoted to a public use (*City of Inglewood* v. *Los Angeles County,* 207 Cal. 697), but not otherwise. *City of San Diego* v. *Linda Vista Irrigation District, supra; Conley* v. *Hawley,* 2 Cal.2d 23.

Private lessees.—A leasehold interest in publicly owned property is subject to taxation. See Annotation to Revenue and Taxation Code Section 107.

Improvements made by a lessee on publicly owned property have been held subject to taxation (*City and County of San Francisco* v. *McGinn,* 67 Cal. 110; *Outer Harbor etc. Co.* v. *Los Angeles County,* 47 Cal.App. 194), except when the lease requires the lessee to erect the improvements and specifically provides that they are to become the property of the lessor. *City of Oakland* v. *Albers Bros. Milling Co.,* 43 Cal.App. 191. Cf. *Outer Harbor etc. Co.* v. *City of Los Angeles,* 49 Cal.App. 120, holding that only the lessee's possessory right to the land and improvements was subject to taxation.

A possessory interest in government-owned personal property is not a taxable possessory interest in the absence of legislative authority. *General Dynamics Corp.* v. *Los Angeles County,* 51 Cal.2d 59.

Public lessees.—A private lessor will not be exempt from property taxation on a leasehold interest held by the State or a county. *Ohrbach's, Inc.* v. *Los Angeles County,* 190 Cal.App.2d 575; *Rothman* v. *Los Angeles County,* 193 Cal.App.2d 522; *City of Palo Alto* v. *Santa Clara County,* 5 Cal.App.3d 918.

School property.—Under the provisions of this section exempting school property, ownership is immaterial, the decisive factor being the use made of the property. Consequently, privately owned property which is leased to a school district and used exclusively for a public school is exempt from taxation. *Ross* v. *City of Long Beach,* 24 Cal.2d 258.

Federal Government.—Real property previously held by the Reconstruction Finance Corporation and subject, pursuant to the waiver of immunity granted by Section 8 of the Reconstruction Finance Corporation Act, to state and local taxation, becomes property ''owned by the United States,'' immune from such taxes, when it is declared by the Reconstruction Finance Corporation under the Surplus Property Act of 1944 to be surplus to its needs and responsibilities and transferred to another Federal agency for management and disposition as United States property even though record title remained in the Reconstruction Finance Corporation. *Rohr Aircraft Corp.* v. *San Diego County,* 51 Cal.2d 759, rev'd 362 U.S. 628. Personal property owned by the Federal Housing Authority is immune from taxation by states and their political subdivisions although a federal statute authorizes taxation by such entities of its real property. *United States* v. *San Diego County,* 249 F.Supp. 321. Even though the title was registered in the corporation's name for government secrecy purposes, the ship was immune from assessment where the United States actually owned and controlled the ship. *United States* v. *Los Angeles County,* 588 Fed.2d 1308. Federal government cost-reimbursement and fixed-price contracts which provided that title to property acquired in the performance of those contracts passed to the federal government did not establish federal government ownership of overhead personal property such as consumable supplies and low-value office and plant equipment, and thus, was not immune from state property taxation. The title provision in the cost-reimbursement contracts applied only to property subject to controlling regulations, which did not include overhead personal property wherein the government acquired title solely because of partial, advance or progress payments. With regard to the fixed-price contracts, the title provision applied only to enumerated types of property, which did not include overhead personal property. *TRW Space & Defense Sector* v. *Los Angeles County,* 50 Cal.App.4th 1703.

Classification of water rights.—Appropriative water rights granted to a public entity are exempt from taxation where the rights are based on applications filed by the public entity. The public entity is not the successor to taxable property interests of private parties who filed prior applications which were rejected by the state. In adjusting an assessment of taxable water rights owned by a public entity, the State Board of Equalization is required to indicate in its findings the method used to arrive at its valuation in order to enable a reviewing court to determine whether such valuation is legally acceptable or arbitrary. *Amador County* v. *State Board of Equalization,* 240 Cal.App.2d 205.

Valuation of water rights.—Judgment decreeing that an upstream landowner release and return a specified minimum amount of water to the stream did not enlarge a downstream landowner's right of reasonable riparian use. Accordingly, in assessing the value of the downstream water rights after acquisition by a public entity, it was not proper to add the value of the amount of water specified in the decree to the value of the right of reasonable riparian use. *Amador County* v. *State Board of Equalization,* 240 Cal., App. 2d 228.

Installment Contract.—Property the subject of an installment contract of sale, in which the city-vendor retained legal title only as security for the performance of promises made by the vendee, is taxable at its full value to the vendee. *Los Angeles Dodgers, Inc.* v. *Los Angeles County,* 256 Cal.App.2d 918.

(D) EXEMPTIONS—PRIVATE PROPERTY

Imports.—The importer of goods from a foreign country is not subject to be taxed on the imported goods while they remain unsold and in the original, unbroken packages, *Low* v. *Austin,* 13 Wall (U.S.) 29; *Sterling Liquor Distributors, Inc.* v. *County of Orange,* 3 Cal.App.3d 510, cert. denied 400 U.S. 822. To the same effect see *Imperial Development Co.* v. *City of Calexico,* 47 Cal.App. 666, and *Southern Pacific Co.* v. *City of Calexico,* 288 F. 634. In the latter case the fact that the merchandise (cotton) had been compressed and stored in a public warehouse was held to be immaterial. But a pledge or mortgage of imported goods constitutes such a beneficial use of the property as to subject it to the taxing power of the State. *Southern Pacific Co.* v. *City of Calexico, supra.* Whether a sea van or cargo container is merely a means of transportation or whether it constitutes an original package so that its opening causes the goods inside to lose their import status is a fact question to be answered according to the circumstances of each case. *Singer Co.* v. *Kings County,* 46 Cal.App.3d 852. When the goods are shipped in cartons and bales, bona fide and sturdy packaging devices, they, not the sea-van containers, should be regarded as the original packages. *Montgomery Ward & Co., Inc.* v. *Alameda County,* 390 F.Supp. 177.

Where an importer financed the acquisition and delivery of goods in their original containers to a local warehouse through a bank and then used the property to obtain additional financing from a second agency such beneficial use of the goods destroyed their immunity as imports and they became subject to general property tax at that time. *Halo Sales Corp.* v. *San Francisco,* 6 Cal.3d 164.

When coconut oil has been imported from the Philippine Islands and placed in temporary storage in this State, not for the purpose of indiscriminate sale but to facilitate its delivery to buyers throughout the United States pursuant to orders theretofore received, a tax on the oil while in such storage constitutes a tax on imports and a burden on foreign commerce, in violation of Sections 8 and 10 of Article 1 of the United States Constitution. *Philippine Refining Corp.* v. *Contra Costa County,* 24 Cal.App.2d 665.

One ordering merchandise which is shipped from the Philippine Islands consigned to a bank in California financing the purchase, and who upon execution of a trust receipt to pay said bank the amount of the purchase price receives the bill of lading endorsed in his favor and thereupon obtains the goods, is the ''importer'' of the same within the meaning of *Brown* v. *Maryland,* 12 Wheat, (U. S.) 419, so that while the goods remain in the original form or package in which imported, he is not subject to property taxation with respect thereto. *Johnson* v. *Los Angeles County,* 31 Cal.App.2d 579. Where goods are purchased from a Japanese trading company serving as an intermediary between the purchaser and the Japanese manufacturer, as required by Japanese trade practices, it is immaterial whether the title to the goods vests in the purchaser at the time of shipment or only after its arrival in this county in the determination as to whether the purchaser is the ''importer'' in the constitutional sense. *Singer Co.* v. *Kings County, supra.*

Goods shipped into this State from the Philippine Islands or other unincorporated territory of the United States are not exempt from taxation on the ground that they are imports. *Dant & Russell, Inc.* v. *Los Angeles County,* 21 Cal.2d 534, cert. denied 320 U.S. 735.

Lumber imported from foreign countries is not exempt from taxation as an import, even though it remains in the importer's warehouse, after the lumber has been segregated and stacked according to thickness, color, etc., to facilitate its sale, and portions of the shipment have been sold. *E. J. Stanton & Sons* v. *Los Angeles County,* 78 Cal.App.2d 181.

Nails which are imported in kegs and gunny sacks, hardware cloth in rolls, foundation bolts and washers in sacks, chain in barrels, harrow disks in crates, reinforcing rods in long-ton bundles securely tied, bale ties in bundles tied with wire and wrapped with burlap, barbed wire in rolls or coils, and miscellaneous hardware in wooden boxes, stored in the importer's warehouse, and whose containers or fasteners have not been opened or removed, are in the original packages and are exempt from local taxation as imports. *Simon* v. *Los Angeles County,* 141 Cal.App.2d 74.

The Twenty-First Amendment to the United States Constitution, prohibiting transportation of intoxicating liquors into a state in violation of state law, does not permit local ad valorem property taxation of foreign imported liquor in the hands of the importer, in the original package, unconsigned and unsold. *Parrott & Co.* v. *San Francisco,* 131 Cal.App.2d 332.

Imported goods held in a manufacturer's inventory for current operational needs are not protected from state taxation under the import-export clause of the federal constitution. The phrase ''current operational needs'' includes goods which have reached the end of their importation journey and indiscriminate portions of which are used to supply daily operating needs. *Virtue Bros.* v. *Los Angeles County,* 239 Cal.App.2d 220, cert. denied 385 U.S. 820.

Despite retention of the original package, if the warehousing of goods was to provide storage as part of a direct sales process which was conducted directly from the warehouse, then unloading of the sea vans was breaking bulk and results in the loss of import immunity. *Craig Corp.* v. *Los Angeles County,* 51 Cal.App.3d 909; *Nelco Corp.* v. *Los Angeles County,* 72 Cal.App.3d 899; *J. N. Ceazan Co.* v. *Los Angeles County,* 102 Cal.App.3d 486.

A nondiscriminatory ad valorem property tax on imported goods is not within the constitutional prohibition against laying any imposts or duties on imports. *Michelin Tire Corp.* v. *Wages, Tax Commissioner,* 423 U.S. 276. Decisions concerning property taxation are given full retroactive effect unless they are specifically limited by the court to prospective application. No such limitation was announced in the *Michelin* opinion. *Ralston Purina Co.* v. *Los Angeles County,* 56 Cal.App.3d 547. Prior to *Michelin,* goods removed from sea vans and then stored in the importer's warehouse retained their immunity from taxation while awaiting further shipment to the importer's wholesale or retail outlets. *Sears, Roebuck & Co.* v. *Los Angeles County,* 105 Cal.App.3d 58. After *Michelin,* the focus is not on whether goods have lost their status as imports but rather, on whether the ad valorem property tax is construed as an impost or duty. *Limbach* v. *Hooven & Allison Co.,* 466 U.S. 353.

Exports.—Although goods in courses of exportation from this State to a foreign country are not subject to taxation here, the exemption is not applicable unless the goods are in actual course of shipment on the assessment date. *E. Clemens Horst Co.* v. *Sacramento County,* 89 Cal.App. 311.

The portions of a cement plant that on the first Monday in March had been either crated and prepared for shipment, dismantled but not crated, or not dismantled are taxable even though prior to that date the plant had been sold to a foreign purchaser who had engaged a common carrier to dismantle the plant and deliver the constituent parts thereof to a railway carrier for shipment to Colombia, an export license had been obtained for all the machinery and equipment of the plant and a portion of the plant had already been crated and shipped. *Empresa Siderurgica S.A.* v. *Merced County,* 32 Cal.2d 68, aff'd 337 U.S. 154. Property intended for export, which has been moved from the place of purchase to the depot prior to the seller's entering into a valid contract with a foreign buyer, is not exempt from taxation as an export, since the movement to the depot was merely preparatory and there was no certainty that the goods would be shipped to a foreign destination. *Hugo Neu Corp.* v. *Los Angeles County,* 241 Cal.App.2d 703. The court subsequently held on similar facts, but where the scrap was delivered to a processing plant by independent dealers and both processed and unprocessed scrap was taxed, that the property had not yet entered the export stream. *Hugo Neu Corp.* v. *Los Angeles County,* 7 Cal.App.3d 21.

Rice milled to the exact specifications of foreign purchasers prior to the lien date and stored either in bins belonging to a port authority or in the taxpayer's warehouses awaiting transportation to foreign shores was not an export and was subject to taxation. *Rice Growers' Association of California* v. *Yolo County,* 17 Cal.App.3d 227, cert. denied, 404 U.S. 941.

Delivery of California-grown rice to, and its storage in, the port district's elevators were no part of the process of exportation which begins when the goods cross the water's edge. Delivery to a common carrier and subsequent handling of the rice at the port was no part of the export process. *Coe* v. *Errol,* 116 U.S. 517, makes it clear that it is only entry with a common carrier for *transportation to the goods' ultimate destination,* that will suffice. *Cargill of California, Inc.* v. *Yolo County,* 26 Cal.App.3d 704, and *Montrose Chemical Corp.* v. *Los Angeles County,* 243 Cal.App.2d 300, cert. denied 386 U.S.1004, are disapproved. *Farmers' Rice Cooperative* v. *Yolo County,* 14 Cal.3d 616. Cash registers and other business machines built to exact specifications of foreign purchasers and warehoused in Ohio awaiting shipment abroad, title, possession, and control remaining in the manufacturer, were not exports but were subject to taxation. Although there was a practical certainty of exportation, there had been no movement of the machines and no commencement of the process of exportation, without which the immunity conferred by the Import-Export Clause of the Constitution was not available. *Kosydar* v. *National Cash Register Co.,* 417 U.S. 62.

The use of a common carrier merely to carry the rice from one resting place to another within the same state does not constitute a final movement from the state of origin to the country of destination so as to commence the exportation process. *Connell Rice and Sugar Co., Inc.* v. *Yolo County,* 569 F.2d 514.

Physical delivery to a common carrier is required to commence the export process and the mere exchange of documents, dock receipts, will not convert goods that remain stockpiled at the owner's dock to exempt exports. *Schnitzer Steel Products of Cal., Inc.* v. *Alameda County,* 56 Cal.App.3d 104.

Foreign commerce.—Liquors which are bottled, stamped, packaged, and labeled for export, transported under bond to California, and stored in a customs bonded warehouse or in a public warehouse pending sale and movement aboard vessels for delivery to foreign destinations or consumption on the high seas, all in accordance with federal laws and regulations and under the control of Federal Government agencies, constitute items of foreign commerce over which the Federal Government has exercised its power of regulation, and the levy of a local property tax on the liquor while held in warehouses in this State violates the Commerce Clause (Article 1, Section 8, Clause 3) of the United States Constitution. *National Distillers Products Corp.* v. *San Francisco,* 141 Cal.App.2d 651, cert. denied 352 U.S. 928.

A county may not impose an unapportioned tax on aircraft located physically in foreign countries and engaged in foreign commerce for all or part of a tax year, as such a tax is barred by the Commerce Clause of the United States Constitution. Taxation of the aircraft according to the number of days the aircraft were located in the county is permissible, however. *GeoMetrics* v. *Santa Clara County,* 127 Cal.App.3d 940.

Instrumentalities.—A state may not impose an ad valorem property tax on foreign-owned instrumentalities of international commerce even though it is nondiscriminatory. *Japan Line, Ltd.* v. *Los Angeles County,* 441 U.S. 434.

Interstate commerce.—Goods shipped into this State are subject to taxation while in storage here, notwithstanding the fact that they are subsequently shipped outside the State pursuant to orders received by the owner outside the State. *Dant & Russell, Inc.* v. *Los Angeles County,* 21 Cal.2d 534; cert. denied 320 U.S. 735.

Goods stored in San Francisco incident to shipment to Hawaii under permits issued by the War Shipping Administration are immune from local taxation despite indefinite delay in shipment resulting solely from the lack of facilities for immediate transportation.*Von Hamm-Young Co.* v. *San Francisco,* 29 Cal.2d 798.

Tobacco in transit from New York and Newport News to Hong Kong but involuntarily stopped at Los Angeles owing to the outbreak of the war and returned to Newport News as soon as reasonable rail freight transportation could be arranged is not subject to local taxation. *Export Leaf Tobacco Co.* v. *Los Angeles County,* 89 Cal.App.2d 909.

Alcoholic beverages.—The power to regulate interstate commerce in alcoholic beverages, which is delegated to the states by the Twenty-First Amendment of the Constitution of the United States, does not permit local taxation of intoxicating liquors while in transit through this State or while temporarily stored in this State incident to interstate shipment solely because of lack of shipping facilities. *Von Hamm-Young Co.* v. *San Francisco,* 29 Cal.2d 798. The similar power to regulate importation does not permit local taxation of foreign imported liquors while still in the hands of the importer in the original package, unconsigned and unsold. *Parrott & Co.* v. *San Francisco,* 131 Cal.App.2d 332.

Crops.—Fruit trees (*Cottle* v. *Spitzer,* 65 Cal. 456) and alfalfa (*Miller* v. *Kern County,* 137 Cal. 516) are not ''growing crops'' within the meaning of this section.

Rose plants which are planted and raised to sell by a nursery as part of its nursery stock are not growing crops within the meaning of this section. *Jackson-Perkins* v. *Stanislaus County Board of Supervisors,* 168 Cal.App.2d 559.

Plants produced by nurseries are not growing crops within the meaning of this section even though defined as growing agricultural products in the Agricultural Code. *Stribling's Nurseries, Inc.* v. *Merced County,* 232 Cal.App.2d 759.

In assessing the possessory interest of a lessee of tax exempt land leased for grazing purposes, it is proper to capitalize the rent for the total number of years of the lease and renewal options. Natural grasses on the land, which do not require annual or seasonal planting, are not exempt from taxation as growing crops. *El Tejon Cattle Co.* v. *San Diego County,* 64 Cal.2d 428.

U. S. Government checks.—Orders upon the United States Treasury have no constitutional exemption from taxation. *Hibernia etc. Society* v. *San Francisco,* 139 Cal. 205, aff'd in 200 U.S. 310.

Exempt property as security.—Loans or solvent credits secured by a pledge of nontaxable property are taxable. *Savings & Loan Society* v. *San Francisco,* 131 Cal. 356; *San Francisco* v. *La Societe etc.,* 131 Cal. 612; *Security Savings Bank* v. *San Francisco,* 132 Cal. 599.

Home-port doctrine.—A vessel fishing in international waters all but 100 days a year is not taxable at the port where it remains two thirds of this time, obtains master and crew, and sells its catch, where the owner's residence, vessel's registry, and unloading of catch occur elsewhere. *Martinac* v. *San Diego County,* 255 Cal.App.2d 175.

Bonded inventories.—Imported ores and concentrates destined for the domestic market and held under customs bond to supply the current operational needs of a refiner are subject to taxation and are not exempt by virtue of their status either as imports or goods in bond. *American Smelting & Refining Co.* v. *Contra Costa County,* 271 Cal.App.2d 437, appeal dismissed 396 U.S. 273.

Vehicles Operated on Public Highway.—Vehicles operated on the public highways under trip permits obtained under section 4003 of the Vehicle Code in lieu of registration are not exempt from ad valorem property tax under section 10758 of the Revenue and Taxation Code. *Bigge Crane Rental Co.* v. *Alameda County,* 7 Cal.3d 414.

(E) OTHER MATTERS

Not self-executing.—This section is not self-executing, but imposes upon the Legislature the duty providing a method for the ascertainment of the value of the property to be taxed. *San Pedro etc. R. R. Co.* v. *City of Los Angeles,* 180 Cal. 18. Cf. *Hyatt* v. *Allen,* 54 Cal. 353.

Credits.—Deduction of debts.—The reference to ''credits secured by mortgage or trust deed'' in the last sentence of the first paragraph of this section refers exclusively to obligations affecting realty. *Bank of Willows* v. *Glenn County,* 155 Cal. 352.

The authority granted the Legislature to provide for a deduction from credits of debts due to bona fide residents of this State does not prevent the allowance of a deduction for debts due nonresidents doing business in California. *Richfield Oil Corp.* v. *Los Angeles County,* 100 Cal.App.2d 535.

Income taxes due to the Federal Government are not ''debts due to bona fide residents of this State'' within the meaning of the last sentence of the first paragraph of this section. *Douglas Aircraft Co., Inc.* v. *Los Angeles County,* 137 Cal.App.2d 803.

Property.—For definitions of the various forms of property see Revenue and Taxation Code Sections 103 to 107.

Double taxation.—The fact that a business may be required to pay a regulatory license tax under one city ordinance and also to pay property taxes under another ordinance does not render the ordinances invalid on the ground of double taxation inasmuch as this section has no application to excise taxes. *Redwood Theatres, Inc.* v. *City of Modesto,* 86 Cal.App.2d 907.

This section applies only to property taxes and does not prohibit the levying by a municipality of two excise taxes on theatres and certain other amusement businesses for the same purpose in the same period. *Fox Bakersfield Theatre Corporation* v. *City of Bakersfield,* 36 Cal.2d 136; *City of Stockton* v. *West Coast Theatres, Inc.,* 36 Cal.2d 879.

Federal reserve and national bank notes.—Federal reserve notes and national bank notes may be validly taxed as tangible personal property without enabling legislation, pursuant to congressional permission to tax money. *Beery* v. *Los Angeles County,* 116 Cal.App.2d 290.

Property pledged to the Commodity Credit Corporation.—Barley stored in a public warehouse and pledged to the Commodity Credit Corporation as security for advances made under the federal farm program is taxable to the pledgor. *Burhans* v. *Kern County,* 170 Cal.App.2d 218.

Flight Equipment of Air Carrier.—Taxation of aircraft owned by a domiciliary airline and used in the Korean airlift was found to violate the federal constitution in a decision by the California Supreme Court for which there is no majority opinion. *Flying Tiger Line, Inc.* v. *Los Angeles County,* 51 Cal.2d 314, cert. denied 359 U.S. 1001.

The ''home port'' doctrine was held applicable to aircraft owned by a foreign airline and flown solely in foreign commerce between sovereign nations and, consequently, apportioned county and city property taxes levied thereon were invalid. *Scandinavian Airlines System, Inc.* v. *Los Angeles County,* 56 Cal.2d 11, cert. denied 368 U.S. 899.

Gold.—Local taxation of gold held by a licensed refiner does not conflict with federal laws governing the acquisition and use of gold. *American Smelting & Refining Co.* v. *Contra Costa County,* 271 Cal.App.2d 120, appeal dismissed 396 U.S. 273.

School financing may be unconstitutional.—Taxpayers, who charged that the present method of public school financing, which is based on district-wide property taxes, discriminates against the poor and denies them equal protection of the laws, had adequate grounds on which to bring an action since, as a practical matter, a district with a large tax base can produce quality education with a small burden on its taxpayers, while a poor district cannot hope to accomplish

anything but a mediocre program at a substantial burden to its taxpayers. Upon rehearing the court emphasized that this was not a final decision on the merits and that, if the trial court should determine that the existing system is unconstitutional, it must provide for an orderly transition to a constitutional system of school financing. The present system is to remain operable until an appropriate new system can be effected. *Serrano* v. *Priest*, 5 Cal.3d 584.

Vessel.—Liberian vessel in California port for nine years from the date of lay-up with apparent refusal to engage in foreign commerce held to have lost its status as one engaging in foreign commerce and to be subject to imposition of county property tax. *Continental Dredging Co.* v. *Los Angeles County,* 366 F.Supp. 1133.

Cargo containers of shipping company.—In view of the dictate of the section, no specific statutory authority is necessary to levy tax on cargo containers used exclusively for transportation of cargo for hire in interstate and foreign commerce on an ''average presence'' basis. *Sea-Land Service, Inc.* v. *Alameda County,* 12, Cal.3d 772.

Indians.—Personal property belonging to any Indian or Indian tribe and located on land that is held in trust by the United States is not subject to state taxation. *Bryan* v. *Itasca County,* 426 U.S. 373. Indian tribe's commercial property located off its reservation was subject to local ad valorem real and personal property taxes. The tribe was similarly situated with foreign sovereigns which owned property outside their territorial jurisdictions and which were subject to the same taxes. *Salt River Pima-Maricopa Indian Community* v. *Yavapai County*, 50 F.3d 739.

Situs.—On taxable situs of property see Section 14 and annotations to former Article XIII, Section 10 thereunder.

SEC. 2. **Property subject to taxation.** The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction.

Intangible Property.—While intangible property is exempted from property taxation, such property may enhance the value of taxable tangible property, and this effect may be reflected in the valuation of the tangible property. Thus, in determining the value of property, assessing authorities may take into consideration earnings derived from intangible property, which may depend upon the possession of intangible rights and privileges that are not themselves regarded as a separate class of taxable property. *ITT World Communications, Inc.* v. *Santa Clara County,* 101 Cal.App.3d 246; *Los Angeles SMSA Ltd. Partnership* v. *State Board of Equalization,* 11 Cal.App.4th 768; *GTE Sprint Communications Corp.* v. *Alameda County,* 26 Cal.App.4th 992. Intangible values that cannot be separately taxed as property may be reflected in the valuation of taxable property. Thus in determining the value of taxable property, assessing authorities may take into consideration earnings derived therefrom, which may depend upon the possession of intangible rights and privileges that are not themselves regarded as a separate class of taxable property. *Stanislaus County* v. *Assessment Appeals Board,* 213 Cal.App.3d 1445; *Freeport-McMoran Resource Partners* v. *Lake County,* 12 Cal.App.4th 634. Intangible values that cannot be separately taxed as property may be reflected in the valuation of taxable property. In determining the value of property, assessing authorities may take into consideration earnings derived therefrom, which may depend upon the possession of intangible rights and privileges that are not themselves regarded as a separate class of taxable property. Thus, in a real property case, intangibles associated with the realty, such as zoning, permits, and licenses, are not real property and may not be taxed as such. However, insofar as such intangibles affect the real property's value, for example by enabling its profitable use, they may properly contribute to an assessment of fair market value. *American Sheds, Inc.* v. *Los Angeles County,* 66 Cal.App.4th 384.

The record contained substantial evidence that a cable television service had a value apart from its franchise and tangible assets. Whether labeled as a subscriber list, going concern value, or enterprise value, the record supported a value that was attributable to the operational nature of the service. These intangibles related to the business and related to real property only in their connection with the business using them. Thus, although intangible values may be reflected in the value of a possessory interest, they are not necessarily subsumed as a matter of law. *Shubat* v. *Sutter County Assessment Appeals Board,* 13 Cal.App.4th 794. Car rental firms rights to do business at airports and their environs, other than the counters and reserved parking lots in their use and possession, were valuable business opportunities, but were intangibles not subject to property tax. However, valuation of the possessory interests in the counters and parking lots may consider their airport locations as contributing to and enhancing their independent value as business properties. *Los Angeles County* v. *Los Angeles County Assessment Appeals Board No. 1,* 13 Cal.App.4th 102.

Right to engage in business.—A cable television company's right to engage in the cable television business was not a part of its real property possessory interest for assessment purposes, since such right constituted an intangible asset that was exempt from taxation under the California Constitution. The right to engage in the cable television business is protected by free speech guaranties and is exempt from property taxation unless the state can show an overriding governmental interest beyond mere revenue raising. However, in assessing the value of the company's possessory interest, the company's intangible right to do business could be considered, since without this right the possessory interest

would have little or no market value. *Stanislaus County* v. *Assessment Appeals Board,* 213 Cal.App.3d 1445. The county board properly concluded that a cable television service's right to do business had a separate value, and was an intangible asset exempt from property taxation. Moreover, the service's favorable franchise terms had no value separate from the right to do business, but were subsumed within and enhanced the value of its right to do business. *Shubat* v. *Sutter County Assessment Appeals Board,* 13 Cal.App.4th 794.

Enterprise value.—Under the income approach to valuation, only earnings from the property itself or the beneficial use thereof are to be considered. Income derived in large part from enterprise activity may not be ascribed to the property. When no sound basis appears for apportionment of income as between enterprise activity and the property itself, then a method may be employed which imputes an appropriate income to the property. *Freeport-McMoran Resource Partners* v. *Lake County,* 12 Cal.App.4th 634.

A State Board of Equalization rule enumerating the permissive modes of assessing possessory interests is not exclusive, and when no sound or practical basis appears for apportionment of income between enterprise activity and the property itself, a method may be used which imputes an appropriate income to the property. After assigning amounts to the tangible assets, the county board reasonably allocated one third of the residual value to the taxable possessory interest and the remainder to other intangibles. *Shubat* v. *Sutter County Assessment Appeals Board,* 13 Cal.App.4th 794. Utilization of a stadium food and beverage franchisee's entire income flow, adjusted for certain expense factors, as the basis for property tax valuation was improper where a large part of its income was clearly based on its enterprise value, as distinguished from the value of its use of taxable property under agreement with the stadium owner. Some portion of the profitability of the franchisee's operation could reasonably be attributed to the taxable property it utilized, and an imputed fair rental value could be determined. *Service America Corporation* v. *San Diego County,* 15 Cal.App.4th 1232.

Decisions Under Former Article XIII, Section 14.

Personal property.—The term ''tax burden'' as used in this section has reference to the ratio which the tax bears to the value of the property. Consequently, the assessment of personal property at a greater percentage of market or cash value than real property is not violate of this section when the difference in assessment is offset by the fact that a greater rate is applied to real property. *Dawson* v. *Los Angeles County,* 15 Cal.2d 77.

A leasehold interest in tax-exempt land is not personal property within the meaning of this section. *Forster Shipbuilding Co.* v. *Los Angeles County,* 54 Cal.2d 450.

The power of the Legislature to classify personal property for purposes of preferential tax treatment or exemption does not abridge the assessor's constitutional duty to uniformly assess and to equalize assessments of personal property which has not been so classified. *Hewlett-Packard Co.* v. *Santa Clara County,* 50 Cal.App.3d 74.

Possessory interest in personal property.—A possessory interest in government-owned personal property is not a taxable possessory interest in the absence of legislative authorization. *General Dynamics Corp.* v. *Los Angeles County,* 51 Cal.2d 59.

Liquor licenses.—The provisions of this section granting power to provide for taxation of intangible personal property listed therein by implication exclude items of intangible personal property not specified. Liquor licenses, not being included in the list of intangibles specified, are therefore not subject to ad valorem taxation as personal property. *Roehm* v. *County of Orange,* 32 Cal.2d 280.

Copyrights.—A copyright interest, being an intangible and not a solvent credit, is not subject to an ad valorem personal property tax because it is not one of the intangibles specifically enumerated in Article XIII, Section 14, *Michael Todd Co.* v. *Los Angeles County,* 57 Cal.2d 684.

Title plant*.—Although, with certain exceptions, intangible personal property is exempt from taxation, and although, physically, a title insurance company's ''title plant'' of the history of real property parcels in a county consist merely of paper records, the ''title plant'' is subject to an ad valorem tax computed by taking into consideration the earnings derived from the intangible information contained therein. *Western Title Guaranty Co.* v. *Stanislaus County,* 41 Cal.App.3d 733.

***Note.—**Revenue and Taxation Code Section 997 prevents inclusion of or consideration of the intangible value of information or data recorded on tangible material of persons engaged in a business or profession, including title plants, after 1972.

SEC. 3. **Exempt property.** The following are exempt from property taxation:

(a) Property owned by the State.

(b) Property owned by a local government, except as otherwise provided in Section 11(a).

(c) Bonds issued by the State or a local government in the State.

(d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.

(e) Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.

(f) Buildings, land on which they are situated, and equipment used exclusively for religious worship.

(g) Property used or held exclusively for the permanent deposit of human dead or for the care and maintenance of the property or the dead, except when used or held for profit. This property is also exempt from special assessment.

(h) Growing crops.

(i) Fruit and nut trees until 4 years after the season in which they were planted in orchard form and grape vines until 3 years after the season in which they were planted in vineyard form.

(j) Immature forest trees planted on lands not previously bearing merchantable timber or planted or of natural growth on lands from which the merchantable original growth timber stand to the extent of 70 percent of all trees over 16 inches in diameter has been removed. Forest trees or timber shall be considered mature at such time after 40 years from the time of planting or removal of the original timber when so declared by a majority vote of a board consisting of a representative from the State Board of Forestry, a representative from the State Board of Equalization, and the assessor of the county in which the trees are located.

The Legislature may supersede the foregoing provisions with an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation. Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions. Nothing in this paragraph shall be construed to exclude timberland from the provisions of Section 8 of this article.

(k) $7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence, unless the dwelling is receiving another real property exemption. The Legislature may increase this exemption and may deny it if the owner received State or local aid to pay taxes either in whole or in part, and either directly or indirectly, on the dwelling.

No increase in this exemption above the amount of $7,000 shall be effective for any fiscal year unless the Legislature increases the rate of State taxes in an amount sufficient to provide the subventions required by Section 25.

If the Legislature increases the homeowners' property tax exemption, it shall provide increases in benefits to qualified renters, as defined by law, comparable to the average increase in benefits to homeowners, as calculated by the Legislature.

(*l*) Vessels of more than 50 tons burden in this State and engaged in the transportation of freight or passengers.

(m) Household furnishings and personal effects not held or used in connection with a trade, profession, or business.

(n) Any debt secured by land.

(o) Property in the amount of $1,000 of a claimant who—

(1) is serving in or has served in and has been discharged under honorable conditions from service in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Revenue Marine (Revenue Cutter) Service; and—

(2) served either

(i) in time of war, or

(ii) in time of peace in a campaign or expedition for which a medal has been issued by Congress, or

(iii) in time of peace and because of a service-connected disability was released from active duty; and—

(3) resides in the State on the current lien date.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

If the claimant is married and does not own property eligible for the full amount of the exemption, property of the spouse shall be eligible for the unused balance of the exemption.

(p) Property in the amount of $1,000 of a claimant who—

(1) is the unmarried spouse of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) does not own property in excess of $10,000, and

(3) is a resident of the State on the current lien date.

(q) Property in the amount of $1,000 of a claimant who—

(1) is the parent of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) receives a pension because of the veteran's service, and

(3) is a resident of the State on the current lien date.

Either parent of a deceased veteran may claim this exemption.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

(r) No individual residing in the State on the effective date of this amendment who would have been eligible for the exemption provided by the previous section 1¼ of this article had it not been repealed shall lose eligibility for the exemption as a result of this amendment.

History.—Additional amendment adopted November 5, 1974, increased the amount of the exemption of subdivision (k) from $3,000 to $7,000 and added the third paragraph thereof. The amendment of November 8, 1988, deleted former subsection (o)(4) requiring that the veteran "resided in the State either (i) on November 3, 1964, or (ii) at the time of entry into one of the branches of the armed forces named in paragraph (1) of this subsection; deleted former subsections (i) and (ii) of subsection (p)(3) requiring that the unmarried spouse "(i) resided in the State on November 3, 1964, or (ii) is the unmarried spouse of a deceased veteran who met the residency requirement stated in paragraph 4 of subsection 3(o)."; and deleted former subsections (i) and (ii) of subsection (q)(3) requiring that the parent of a deceased veteran "(i) resided in the State on November 3, 1964, or (ii) is the parent of a deceased veteran who met the residency requirement stated in paragraph (4) of subsection 3(o)".

(a) Note.—See Revenue and Taxation Code, Section 202.

Construction.—Public ownership of property alone confers the exemption; it is not conditioned on use of property exclusively for governmental purposes. Exemption extends to property taxes and to special assessments. Thus, a county tax on a municipal utility district that generated electricity from geothermal steam in the county was invalid under this section. *Sacramento Municipal Utility District* v. *Sonoma County,* 235 Cal.App.3d 726. Because state and local government property is exempt from property taxation under this section, such property is also exempt from special

assessments, including a city's sewage facilities charge to derive capital for sewer construction. *Regents of University of California* v. *City of Los Angeles,* 100 Cal.App.3d 547. Such property is also exempt from an increased sewer service charge where the charge was to be used to derive capital for sewer construction and constituted a disguised special assessment. *Regents of University of California* v. *City of Los Angeles,* 148 Cal.App.3d 451.

Land and improvements occupied by the Franchise Tax Board under a lease-purchase agreement were exempt under this Article since, despite the lease agreement, the state held the essential indicia of ownership. The financing arrangement closely resembled the financing of a purchase through a loan secured by a deed of trust on the subject property, most of the property rights were vested in the state, and the lease provided for automatic vesting of title in the state at the expiration of the lease if all rental payments were made. The state thus occupied the property as a beneficial owner and would eventually hold all incidents of ownership if it so chose. State property is not to be taxed unless there is express authority for taxation. *Mayhew Tech Center, Phase II* v. *Sacramento County,* 4 Cal.App.4th 497.

A term used in a constitutional amendment must be construed according to the meaning it had when the amendment was adopted. The Legislature cannot expand the meaning of an amendment by subsequent legislation, since such an expansion would be equivalent to a constitutional amendment. *Nunes Turfgrass, Inc.* v. *Kern County,* 111 Cal.App.3d 855.

A constitutional amendment should be construed in accordance with the ordinary meaning of the words as generally understood at the time of its enactment. Thus, where it does not appear that words used in such an amendment were used in a technical sense, the voters must be deemed to have construed the amendment by the meaning apparent on its face according to the general use of the words employed. *Pugh* v. *City of Sacramento,* 119 Cal.App.3d 485.

(b) Note.—See Revenue and Taxation Code, Section 202.

Construction.—Property owned by a county and used for a public purpose is exempt from a city's property tax under this section; however, it does not provide exemption for assessments by special districts. *Santa Barbara County* v. *City of Santa Barbara,* 59 Cal.App.3d 364.

(d) Note.—See Revenue and Taxation Code, Section 202.

Construction.—This section is self-executing. ''Museum'', as used therein, means a building the predominant purpose of which is to house and display objects of lasting value. This definition does not preclude other uses, but it requires use as a museum to be primary. Evidence of plaintiff's limited hours, appointment policy, isolated location, and lack of publicity suggested only a limited use of the property as a museum and hence, the exemption was inapplicable. *Fellowship of Friends, Inc.* v. *Yuba County,* 235 Cal.App.3d 1190.

The University of California is a state university within the meaning of section 3(d), exempting from taxation property used exclusively for state universities. *Regents of University of California* v. *State Bd. of Equalization,* 73 Cal.App.3d 660.

Section 3(d) is concerned primarily with defining the circumstances under which property not owned by a public school or university is entitled to a tax exemption. Its purpose is to encourage private property owners to make property available for public school use. Although leasehold interests in university property may be property that is exempt from taxation under this section, private homeowners' possessory interests in land owned by the University of California and leased for long terms to the homeowners (university faculty and employees) as sites for privately owned residences were not exempt since their property interests were used for their private use, not for the benefit of the University. *Connolly* v. *Orange County,* 1 Cal.4th 1105.

Warehouses and administrative buildings constitute an incidental use of property that is within the test of exclusive use for purposes of public schools and free public libraries. *Yttrup Homes* v. *Sacramento County,* 73 Cal.App.3d 279.

If the portion of property used for public schools is clearly identifiable from the nonexempt portion, then an apportionment is proper since the exempt portion is subject to exclusive use by the public school system. *Oates* v. *Sacramento County,* 78 Cal.App.3d 745.

The use of a university golf course is an integral part of the educational and recreational function within the meaning of section 3(e). *Board of Trustees* v. *Santa Clara County,* 86 Cal.App.3d 79.

A student's possessory, leasehold interest in family housing owned by the University of California is exempt from property tax under Article XIII, section 3(d). *Mann* v. *Alameda County,* 85 Cal.App.3d 505.

Decisions Under Former Article XIII, Section 1.

Construction.—Under the rule of strict but reasonable construction the phrase ''exclusively used for public schools'' refers not only to primary but to certain incidental uses as well; however, such incidental uses must be directly connected with, essential to, and in furtherance of the primary use and not merely revenue-generating devices. *Honeywell Information Systems, Inc.* v. *Sonoma County,* 44 Cal.App.3d 23.

(e) Note.—See Revenue and Taxation Code, Section 203.

Construction.—The exemption from property taxation provided by this section does not extend to unified school district-imposed school development fees. *Loyola Marymount University* v. *Los Angeles Unified School District,* 45 Cal.App.4th 1256.

Decisions Under Former Article XIII, Section 1a.

Collegiate grade.—Exemption is granted to an institution of collegiate grade as a whole and not otherwise, and when the grades are mixed in the same institution there can be no exemption. *Pasadena University* v. *Los Angeles County,* 190 Cal. 786. However, a university which complies with Revenue and Taxation Code Section 203 by requiring the completion of a four-year high school course or its equivalent for admission of all regular students is not deprived of its status as an institution entitled to exemption under this section by the fact that it gives college courses to special students who have not had the prerequisite high school education. *University of Southern California* v. *Robbins,* 1 Cal.App.2d 523, noted in 8 So. Calif. L. Rev. 261.

An association offering courses of study in drama and theater arts leading to a diploma or degree is entitled to an exemption under this section where the admission requirements and the courses of study are the equivalent of or superior to comparable courses in other institutions recognized as of collegiate grade, and where all the profits of the school and the income from its property are used to conduct the school. *Pasadena Playhouse Ass'n.* v. *Los Angeles County,* 69 Cal.App.2d 611.

Hospital.—The words ''educational institution,'' as used in this section, do not include a society organized primarily for hospital purposes, but which incidentally thereto conducts a school of nursing. *Lutheran Hospital Society* v. *Los Angeles County,* 25 Cal.2d 254.

Use tax.—The exemption from taxation provided by this section applies only to direct property taxation. The exemption has no application to the use tax, which is an excise tax. *California Inst. of Technology* v. *Johnson,* 55 Cal.App.2d 856.

Construction.—Property ''used exclusively for the purposes of education'' includes any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college, including housing for faculty and students and a parking lot. *The Church Divinity School of the Pacific* v. *Alameda County,* 152 Cal.App.2d 496.

(f) Note.—See Revenue and Taxation Code, Section 251, *et seq.*

Decisions Under Former Article XIII, Section 1½.

Extent of exemption.—A portion of a church lot which is used by the members of the congregation for the parking of their automobiles when attending church services and also affords light and air for the church building is exempt from taxation under this section. *Immanuel Presbyterian Church* v. *Payne,* 90 Cal.App. 176.

An owner of property occupied by a religious corporation as lessee cannot claim the exemption granted by this section. *Havens* v. *Alameda County,* 30 Cal.App. 206.

The term ''building'' does not include the literature of a religious sect stored in its building and such written matter is not exempt from taxation under this section. *Watchtower Bible and Tract Society, Inc.* v. *Los Angeles County,* 30 Cal.2d 426, cert. denied, 332 U. S. 811.

Prior to its amendment in 1952 this section did not exempt from taxation a church in the course of construction. *First Baptist Church* v. *Los Angeles County,* 113 Cal.App.2d 392.

Definition of "religious worship".—Belief in a Supreme Being is not a prerequisite to qualification for the exemption provided for by this section. *Fellowship of Humanity* v. *Alameda County,* 153 Cal.App.2d 673.

Failure to claim.—Since the exemption to churches is granted by the State Constitution, the statutory requirement of filing a claim for the exemption is regulatory only, and failure to file on the part of a church will not preclude a refund of taxes paid nor a waiver of taxes imposed where payment has not been made. *Church of the Brethren* v. *City of Pasadena,* 196 Cal.App.2d 814.

(g) Note.—See Revenue and Taxation Code, Section 204.

Decisions Under Former Article XIII, Section 1b.

Construction.—In order to be exempt from taxation or local assessment under this section it is not sufficient that the income from the property is used exclusively for the care, maintenance, or upkeep of burial grounds; the property itself must be so used or held. *Cypress Lawn Cemetery Ass'n.* v. *San Francisco,* 211 Cal. 387.

The word ''profit'' as used in this section does not refer to the financial benefit that accrues to a cemetery association through the sale of burial space at a price in excess of its cost, but means net earnings, the benefits of which accrue directly or indirectly to the stockholders or members of the association. *San Gabriel Cemetery Ass'n.* v. *Los Angeles County,* 49 Cal.App.2d 624.

Property of a cemetery association is exempt from taxation when it has been developed and offered for sale for burial purposes. Such property is none the less ''held'' for burial purposes by reason of the fact that the rights of interment have not been sold. *Pomona Cemetery Ass'n* v. *Los Angeles County,* 49 Cal.App.2d 626.

Land owned by a cemetery association which is no longer dedicated as a cemetery and from which the bodies have been removed is not exempt from taxation under this section, even though the land is to be sold and under Section 7925 of the Health and Safety Code the proceeds of the sale must ultimately be devoted exclusively to purposes of sepulchre. *Laurel Hill Cemetery Association* v. *San Francisco,* 81 Cal.App.2d 371.

A passive holding of land ''dedicated'' for cemetery purposes without making improvements and without lot sales activity, will not support an exemption from taxation. *Memorial Hills Association* v. *Sequoia Investment Corp.,* 157 Cal.App.2d 119.

Property purchased by a nonprofit cemetery association under a percentage sales contract, and used or held by it exclusively for cemetery purposes, is exempt from taxation. *Westminster Memorial Parks* v. *Orange County,* 54 Cal.2d 488.

Waiver.—The provisions of this section are self executing and, since the Legislature has prescribed no procedure to be followed in claiming the exemption, a failure to protest an assessment of cemetery property does not constitute a waiver of the exemption. *Sutter Realty Co.* v. *Sacramento,* 64 Cal.App.2d 1.

(H) Construction.—Turfgrass, which does not have to be annually planted or harvested, is not included within the exemption but is similar to nursery stock in trade, which is taxable as personal property. *Nunes Turfgrass, Inc.* v. *Kern County,* 111 Cal.App.3d 855.

(J) Note.—See Revenue and Taxation Code, Section 211.

Decisions Under Former Article XIII, Section 12¾.

Construction.—Any formulation of value of timberlands for tax purposes which includes, as an essential element or ingredient, the value of immature growing timber runs afoul of this exemption. *Georgia-Pacific Corp.* v. *Butte County,* 37 Cal.App.3d 461.

(k) Note.—See Revenue and Taxation Code, Sections 218, 253.5, et seq.

Construction.—Owners of leasehold condominiums are entitled to this exemption because the interests satisfied the statutory definitional requirements of a condominium, and since a condominium may be a leasehold or subleasehold in duration, each owner owned a condominium within the meaning of Revenue and Taxation Code Section 218. In the context of assessments, the term ''owner'' is used for both fee and nonfee condominiums, and nonfee condominiums include leasehold and subleasehold condominiums. *Smith* v. *State Board of Equalization,*53 Cal.App.4th 331.

Decisions Under Former Article XIII, Section 1d.

Construction.—This section is intended to provide the homeowner relief from his burden of providing revenue for general governmental purposes and not to reduce payments imposed on his property for local improvements supposedly enhancing the value of his property, and the state is not required to reimburse sanitation districts under subvention provisions of the section. *San Bernardino County* v. *Flournoy,* 45 Cal.App.3d 48.

(l) Note.—See Revenue and Taxation Code, Section 209.

Decisions Under Former Article XIII, Section 4.

Construction.—Boats used solely in catching fish and bringing them into market are not entitled to an exemption from taxation, since such boats are not engaged in the transportation of property or persons for hire. *Dragich* v. *Los Angeles County,* 30 Cal.App.2d 397.

Enrollment at a California port is sufficient to satisfy the registration requirement. The right to the exemption is not lost by reason of the inability of the owner of a vessel to obtain freight or passengers. The test to be applied is whether the vessel is regularly engaged in the transportation of freight or passengers and whether any enforced withdrawal, although of long duration, is merely temporary in character. *Los Angeles County* v. *Craig,* 38 Cal.App.2d 58.

Fishing boats are not exempt under this section. *Crivello* v. *San Diego County,* 50 Cal.App.2d 713.

Barges equipped with cranes and held stationary while lifting goods between ship and dock are not engaged in the ''transportation of freight,'' as the exemption only applies to ''carrier'' operations. *Smith-Rice Heavy Lifts, Inc.* v. *Los Angeles County,* 256 Cal.App.2d 190.

The term ''tons burden'' as used in this section refers to net tonnages as registered in the United States Customs Office. *Kiessig* v. *San Diego County,* 51 Cal.App.2d 47.

Decommissioned naval landing vessels of more than fifty tons burden, purchased from the United States Government by a foreign corporation and moored in a harbor in this state, not registered in any port in this state nor engaged in the transportation of freight or passengers, are not exempt under this section. *Ships and Power Equipment Corp.* v. *San Diego County,* 93 Cal.App.2d 522.

Tugboats primarily engaged in towing barges containing petroleum products are engaged in the transportation of freight and thus are wholly exempt under this section. *Star and Crescent Boat Co.* v. *San Diego County,* 163 Cal.App.2d 534.

A sportfishing vessel returning paying customers to the point of departure is engaged in transportation of passengers within the meaning of this section. *Alalunga Sport Fishers, Inc.* v. *San Diego County,* 247 Cal.App.2d 663.

A harbor tug primarily engaged in assisting cargo or passenger vessels in navigating the waters and channels of the harbor is not engaged in the transportation of freight or passengers. *Crowley Launch & Tugboat Co.* v. *County of Los Angeles,* 16 Cal.App.3d 437.

(o) Note.—See Revenue and Taxation Code, Section 205.

Decisions Under Former Article XIII, Section 1¼.

Waiver.—Even though the above provision is self-executing in the sense that no legislative enactment was required to put it into effect, it is within the power of the Legislature to prescribe a reasonable procedure for claiming the exemption and to provide that a failure to follow such procedure constitutes a waiver of the exemption. *Chesney* v. *Byram,* 15 Cal.2d 460.

Construction.—Nontaxable property must be included in the total value of property owned by a veteran to determine if he qualifies for exemption. The assessor for purposes of computing the ceiling property valued nontaxables at market value and taxables at assessed value. *Bates* v. *State Board of Equalization,* 275 Cal.App.2d 388.

Motor vehicle license fee.—The provisions of this section exempting veterans from certain property taxes do not exempt them from payment of the tax imposed on motor vehicles by the Motor Vehicle License Fee Act [now Revenue and Taxation Code Section 10701, et seq.] inasmuch as such tax is an excise tax for revenue purposes and not a property tax. *Ingels* v. *Riley,* 5 Cal.2d 154.

Honorable discharge.—A person ordered into military service by a local draft board during the World War who eight days later was discharged because of physical deficiency was not honorably discharged within the meaning of this section and is not entitled to an exemption from taxation. *Zearing* v. *Johnson,* 10 Cal.App.2d 654.

Termination of war.—Insofar as the exemption of veterans' property from taxation is concerned, the World War ended with the armistice of November 11, 1918. Thus, a person who served in the Army during the period beginning after the armistice was not entitled to the exemption from taxation provided for those who served in time of war, although the treaty of peace was not proclaimed until July 2, 1921. *Kaiser* v. *Hopkins,* 6 Cal.2d 537.

Applies regardless of sex.—The exemption granted by this section applies in favor of women as well as men. *Lockhart* v. *Wolden,* 17 Cal.2d 628.

Peacetime service.—It also extends to veterans whose service has been only during time of peace and who have been released from active duty because of disability resulting from such service. *Baumbaugh* v. *San Diego County,* 44 Cal.App.2d 898.

Assessment to conditional vendee.—Real property in the possession of a purchaser under a conditional contract of sale should be assessed to the purchaser in order that he may claim his exemption as a veteran, even though the seller still holds the legal title for security purposes. *Sherman* v. *Quinn,* 31 Cal.2d 661.

Challenge to Requirements in Federal Court.—A federal district court refused to entertain jurisdiction of a constitutional challenge to the residency requirement in view of the long-standing policy of the federal courts in refraining from interfering in any matter involving the assessment, levy, or collection of any state tax where a plain, speedy and efficient remedy was available in the state courts. *Mandel* v. *Hutchinson,* 494 F.2d 364.

SEC. 3.5. **Change in assessment ratio.** In any year in which the assessment ratio is changed, the Legislature shall adjust the valuation of assessable property described in subdivisions (o), (p) and (q) of Section 3 of this article to maintain the same proportionate values of such property.

History.—New section added by amendment adopted November 6, 1979.

SEC. 4. **Property eligible for exemption.** The Legislature may exempt from property taxation in whole or in part:

(a) The home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is blind in both eyes, has lost the use of 2 or more limbs, or is totally disabled, or if the person has, as a result of a service-connected injury or disease, died while on active duty in military service, unless the home is receiving another real property exemption.

(b) Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

(c) Property owned by the California School of Mechanical Arts, California Academy of Sciences, or Cogswell Polytechnical College, or held in trust for the Huntington Library and Art Gallery, or their successors.

(d) Real property not used for commercial purposes that is reasonably and necessarily required for parking vehicles of persons worshipping on land exempt by Section 3(f).

History.—The amendment of November 3, 1992, added ‘‘, or if the person . . . military service,’’ after ‘‘disabled’’ in subdivision (a).

(b) Note.—See Revenue and Taxation Code, Section 214.

Construction.—Section 214.02, which exempts from taxation, under certain conditions, property used exclusively for the preservation of native plants or animals, or biotic communities, etc., is a valid exercise of the Legislature's power under this section. *Santa Catalina Island Conservancy* v. *Los Angeles County,* 126 Cal.App.3d 221.

Possessory interest not applicable.—To impose a tax on the occupancy or use of individuals whose work is an important ingredient of and contributory factor to, the proper functioning of a charitable institution would in the last analysis cast the burden on the institution itself and thereby would seriously hamper the charitable goal for whose promotion the tax exemption was granted in the first place. *English* v. *County of Alameda,* 70 Cal.App.3d 226.

(c) Note.—See Revenue and Taxation Code, Section 203.5.

Construction.—The California Academy of Sciences, as residuary legatee, was entitled to exemption on its interest in real property during administration of an estate. Ownership of its interest passed to the Academy at decedent's death, and the exemption for property owned by the Academy applied. *California Academy of Sciences* v. *Fresno County,* 192 Cal.App.3d 1436.

Decisions Under Former Article XIII, Section 1c.

Educational purposes.—The term charitable as used in this section authorizes the granting of exemption to property ''used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations,'' provided that the property is used for nonprofit purposes and owned by nonprofit organizations, which exemption was added to Section 214 in 1951 and approved by the voters on referendum at the general election of 1952. *Lundberg* v. *Alameda County,* 46 Cal.2d 644; appeal dismissed in a companion case, *Heisey* v. *Alameda County,* 352 U.S. 921.

A declaration of purpose in a corporate charter which includes ''educational, scientific or literary purposes'' does not preclude the welfare exemption where the charter further requires that they be consistent with the primary charitable purpose of care for the aged. *The Samarkand of Santa Barbara, Inc.* v. *Santa Barbara County,* 216 Cal.App.2d 341.

A nonprofit corporation whose sole purpose is to conduct a girls' school of less than collegiate grade and whose articles prohibit individual profit and provide for distribution to a religious, benevolent, or charitable corporation or fund in case of dissolution is organized for charitable purposes. *Sarah Dix Hamlin School* v. *San Francisco,* 221 Cal.App.2d 336.

Charitable purposes.—A theatre presenting musical comedy and contemporary drama provided educational benefits with regard to dramatic art, entertainment for its audiences, and an opportunity for those performing to display creative talents. This constituted a charitable purpose qualifying for the welfare exemption. *Stockton Civic Theatre* v. *Board of Supervisors,* 66 Cal.2d 13.

On the following facts the court denied the welfare exemption holding that a corporation was not engaged in a charitable activity. The non-profit corporation provided low-rent housing for senior citizens but did not assist any of the tenants in paying their monthly rent, nor did it have a policy of reducing rent based on inability to pay. The corporation did not offer a life-care program or medical services to the tenants who were self-sufficient and self-supporting. The tenants paid the full cost of the housing so that the corporation could pay its operational expenses and amortize the purchase price of the rental units. *Martin Luther Homes* v. *Los Angeles County,* 12 Cal.App.3d 205.

Course of Construction.—A building is in the course of construction within the meaning of this section when at noon on the first Monday in March some trenches for the foundation of the building had been dug. *National Charity League, Inc.* v. *Los Angeles County,* 164 Cal.App.2d 241.

Special Assessments.—The real property of an institution qualifying for the welfare exemption from taxation under this section is not exempt from special assessments, such as those imposed under authority of the Los Angeles County Flood Control Act. *Cedars of Lebanon Hospital* v. *Los Angeles County,* 35 Cal.2d 729 (hospital property); *Young Men's Christian Ass'n* v. *Los Angeles County,* 35 Cal.2d 760 (Young Men's Christian Association property).

(d) Note.—See Revenue and Taxation Code, Section 251, *et seq.*

Decisions Under Former Article XIII, Section 1½.

Extent of exemption.—A portion of a church lot which is used by the members of the congregation for the parking of their automobiles when attending church services and also affords light and air for the church building is exempt from taxation under this section. *Immanuel Presbyterian Church* v. *Payne,* 90 Cal.App. 176.

SEC. 5. **Scope of certain exemptions.** Exemptions granted or authorized by Sections 3(e), 3(f), and 4(b) apply to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption.

SEC. 6. **Failure to claim exemptions to be deemed waiver.** The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year.

Construction.—This section does not merely preclude the Legislature from granting relief to anyone who fails to make a timely claim for an exemption. It also precludes the Legislature from granting relief to anyone who fails timely to claim an exemption ''in a manner required by the laws in effect at the time the claim is required to be made.'' Thus, Revenue and Taxation Code Section 214.12, which provides a retrospective welfare exemption for certain claimants who would previously have qualified therefor but for a failure to have their property interests recorded, is unconstitutional as conflicting with this section since it is an attempt to retrospectively grant relief to an organization that did not make a claim for an exemption in the manner then required. *Copren* v. *State Board of Equalization,* 200 Cal.App.3d 828. An exclusion from change in ownership resulting from a qualifying transfer of real property between a parent and child does not constitute a classification which reduces a property tax within the meaning of this section. By its express terms, this section applies only to claims for exemptions or classifications which are required to be filed annually. Hence, such a waiver does not apply to the parent-child exclusion, which requires the one-time filing of a claim for exclusion from reassessment. *Scott* v. *State Board of Equalization,* 50 Cal.App.4th 1597.

SEC. 7. **Additional property eligible for exemption.** The Legislature, two-thirds of the membership of each house concurring, may authorize

county boards of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them.

SEC. 8. **Assessment of open space lands and property of historical significance.** To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

History.—The amendment of June 8, 1976, added the second paragraph.

Construction.—This section is not mutually exclusive of the ''charitable purposes'' exemption from taxation of section 4(b). The reduced valuation provision hereof contemplates the use of open space lands in commercially profitable ventures, whereas the exemption provision prohibits profit. Thus, each section serves a distinct public purpose. *Santa Catalina Island Conservancy* v. *Los Angeles County,* 126 Cal.App.3d 221.

Termination of Contract.—Both the basic provisions for cancellation (Gov. Code, § 51282) and the window period cancellation provisions (former Gov. Code, § 51282.1) were valid under the requirement of this section that land be ''enforceably restricted.'' *Honey Springs Homeowners Assn.* v. *Board of Supervisors,* 157 Cal.App.3d 1122. The window period cancellation provision (former Gov. Code, § 51282.1) was unconstitutional and inconsistent with the requirement of this Article that land be ''enforceably restricted''. The provision impermissibly redefined restrictions so as to allow termination of Williamson Act contracts merely because development was imminent and without concern for the public's interest in the conservation policies underlying this Article and the Williamson Act. *Lewis* v. *City of Hayward,* 177 Cal.App.3d 103.

Assessment on Termination of Contract.—Agricultural property subject to a Williamson Act contract which was terminated in 1977 was properly assessed in 1978 to reflect fair market value under the ''roll-back'' provisions of Article XIII A, Section 2(a). While a literal application of the language of Article XIII A, Section 2(a) would require use of the ''full cash'' value figure reflected on the 1975–76 secured tax roll, such would violate the essence of this section, which was not repealed by Article XIII A. *Shellenberger* v. *Board of Equalization of San Joaquin County,* 147 Cal.App.3d 510.

SEC. 8.5. **Property tax postponement.** The Legislature may provide by law for the manner in which a person of low or moderate income who is 62 years of age or older may postpone ad valorem property taxes on the dwelling owned and occupied by him or her as his or her principal place of residence. The Legislature may also provide by law for the manner in which a disabled person may postpone payment of ad valorem property taxes on the dwelling owned and occupied by him or her as his or her principal place of residence. The Legislature shall have plenary power to define all terms in this section.

The Legislature shall provide by law for subventions to counties, cities and counties, cities and districts in an amount equal to the amount of revenue lost by each by reason of the postponement of taxes and for the reimbursement to the state of subventions from the payment of postponed taxes. Provision shall be made for the inclusion of reimbursement for the payment of interest on, and any costs to the state incurred in connection with, the subventions.

History.—New section added by amendment adopted June 8, 1976. The amendment of November 6, 1984, added "or her" after "him" and after "his" in the first sentence, and added the second sentence to the first paragraph; and deleted "such" before "subventions" after "of" in the first sentence, and substituted "of" for "in such" after "inclusion" in the second sentence of the second paragraph.

SEC. 9. **Assessment of single-family dwellings.** The Legislature may provide for the assessment for taxation only on the basis of use of a single-family dwelling, as defined by the Legislature, and so much of the land as is required for its convenient use and occupation, when the dwelling is occupied by an owner and located on land zoned exclusively for single-family dwellings or for agricultural purposes.

SEC. 10. **Assessment of golf courses.** Real property in a parcel of 10 or more acres which, on the lien date and for 2 or more years immediately preceding, has been used exclusively for nonprofit golf course purposes shall be assessed for taxation on the basis of such use, plus any value attributable to mines, quarries, hydrocarbon substances, or other minerals in the property or the right to extract hydrocarbons or other minerals from the property.

Construction.—No conflict exists between this section and Article XIII A, Section 2 of the Constitution, which imposes limitations on increases in the assessed value of real property and on the real property tax rate but does not redefine value. Thus, the values of plaintiffs' properties are their respective 1975–76 ''golf course'' values subject to the 2 percent per year increases authorized by Article XIII A, Section 2(b). *Los Angeles Country Club* v. *Pope*, 175 Cal.App.3d 278.

Decisions Under Former Article XIII, Section 2.6.

Construction—constitutionality.—The special tax treatment accorded certain golf courses is a reasonable classification in view of the state policy of encouraging the preservation of open spaces and therefore does not violate the equal protection clause of the U.S. Constitution. Furthermore, there is no illegal state action since the state does not participate in the operation or management of those organizations which allegedly practiced racial discrimination. The instructions to the assessor set forth in the provision constitute a reasonably clear statement of an appraisal standard. *Stevens* v. *Watson*, 16 Cal.App.3d 629, cert. denied 407 U.S. 925.

SEC. 11. **Lands owned by local governments that are outside their boundaries.** (a) Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in lands, are taxable if (1) they are located in Inyo or Mono County and (a) they were assessed for taxation to the local government in Inyo County as of the 1966 lien date, or in Mono County as of the 1967 lien date, whether or not the assessment was valid when made, or (b) they were acquired by the local government subsequent to that lien date and were assessed to a prior owner as of that lien date and each lien date thereafter, or (2) they are located outside Inyo or Mono County and were taxable when acquired by the local government. Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired.

(b) Taxable land belonging to a local government and located in Inyo County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1966 lien date and in an amount derived by multiplying its 1966 assessed value by the ratio of the statewide per capita assessed value of land as of the last lien date prior to the current lien date to $766, using civilian population only. Taxable land belonging to a local government and located in Mono County shall be assessed in any year

subsequent to 1968 at the place where it was assessed as of the 1967 lien date and in an amount determined by the preceding formula except that the 1967 lien date, the 1967 assessed value, and the figure $856 shall be used in the formula. Taxable land belonging to a local government and located outside of Inyo and Mono counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in this section for land located in Mono County.

If land acquired by a local government after the lien date of the base year specified in this Section was assessed in the base year as part of a larger parcel, the assessed value of the part in the base year shall be that fraction of the assessed value of the larger parcel that the area of the part is of the area of the larger parcel.

If a local government divests itself of ownership of land without water rights and this land was assessed in Inyo County as of the 1966 lien date or in Mono County as of the 1967 lien date, the divestment shall not diminish the quantity of water rights assessable and taxable at the place where assessed as of that lien date.

(c) In the event the Legislature changes the prevailing percentage of fair market value at which land is assessed for taxation, there shall be used in the computations required by Section 11(b) of this Article, for the first year for which the new percentage is applicable, in lieu of the statewide per capita assessed value of land as of the last lien date prior to the current lien date, the statewide per capita assessed value of land on the prior lien date times the ratio of the new prevailing percentage of fair market value to the previous prevailing percentage.

(d) If, after March 1954, a taxable improvement is replaced while owned by and in possession of a local government, the replacement improvement shall be assessed, as long as it is owned by a local government, as other improvements are except that the assessed value shall not exceed the product of (1) the percentage at which privately owned improvements are assessed times (2) the highest full value ever used for taxation of the improvement that has been replaced. For purposes of this calculation, the full value for any year prior to 1967 shall be conclusively presumed to be 4 times the assessed value in that year.

(e) No tax, charge, assessment, or levy of any character, other than those taxes authorized by Sections 11(a) to 11(d), inclusive, of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.

(f) Any taxable interest of any character, other than a lease for agricultural purposes and an interest of a local government, in any land owned by a local government that is subject to taxation pursuant to Section 11(a) of this Article shall be taxed in the same manner as other taxable interests. The aggregate

value of all the interests subject to taxation pursuant to Section 11(a), however, shall not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Sections 11(a) to 11(e), inclusive, of this Article.

(g) Any assessment made pursuant to Sections 11(a) to 11(d), inclusive, of this Article shall be subject to review, equalization, and adjustment by the State Board of Equalization, but an adjustment shall conform to the provisions of these Sections.

Construction.—No conflict exists between this section and Article XIII A of the Constitution, which does not by its own terms exclude from its valuation limitation land owned by a local government and located outside its boundaries. This section only sets an upper limit on the valuation for tax purposes of property owned by local governments, and Article XIII A only sets an upper limit on the valuation and taxation of real property. *San Francisco* v. *San Mateo County*, 10 Cal.4th 554.

Newly constructed improvements.—Improvements which are newly constructed after acquisition and which are not constructed to substitute for or to replace taxable improvements are not subject to taxation. *Sacramento Municipal Utility District* v. *El Dorado County,* 5 Cal.App.3d 26.

Acquisition.—Although an agreement to acquire ownership interests in newly constructed improvements had been fully negotiated in 1977, it could not be executed by the parties until the Nuclear Regulatory Commission had approved the transfer of such interests and until a favorable federal income tax ruling had been received. Thus, the cities acquiring such interests did not obtain any equitable, beneficial, or taxable interests until the two contingencies had been met and until the agreement was signed in 1980, regardless of the fact that the agreement, by its own terms, stated that it had been ''executed'' in 1977. *City of Anaheim* v. *San Diego County,* 190 Cal.App.3d 695.

SEC. 12. **Tax rates on unsecured property.** (a) Except as provided in subdivision (b), taxes on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.

(b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls.

History.—The amendment of November 2, 1976, added the subdivision letters, substituted "Except as provided in subdivision (b), taxes" for "Taxes" in the first sentence of subdivision (a), and added subdivision (b).

Construction.—The purpose of subdivision (b) is to assure that in any year in which the assessment ratio is changed, taxes on the unsecured roll are fairly assessed by adjusting the current rate for the unsecured roll to accurately reflect the rate for the prior year's secured roll. The subdivision is in furtherance of the principle of successive year equality between the rolls, but it may not be used to compel roll uniformity in the same year. *R. E. Hanson, Jr. Mfg.* v. *Los Angeles County,* 27 Cal.3d 870.

Decisions Under Former Article XIII, Section 9a.

Construction—constitutionality.—The last sentence of this section means that the assessed value of the property referred to shall be equalized in the same manner as that of other property, in accordance with the present value of the property. It does not mean that the rate shall be adjusted to the rate for the current year on other property. As so construed the section is valid. *Abrams* v. *San Francisco*, 48 Cal.App.2d 1.

Under this section the Legislature may determine what interests constitute sufficient security, as long as they are such that they can reasonably fall within the term ''land.'' The 1943 amendment to Section 107 of the Revenue and Taxation Code, providing that leasehold estates for the production of oil and gas shall be placed on the secured roll, does not violate this section. *Delaney* v. *Lowery,* 25 Cal.2d 561; *Hoyt* v. *Woody,* 25 Cal.2d 947.

SEC. 13. **Land and improvements to be separately assessed.** Land and improvements shall be separately assessed.

Decisions Under Former Article XIII, Section 2.

Construction.—The provisions of this section and of Section 607 of the Revenue and Taxation Code merely require, in order that improved and unimproved real estate may have a uniform basis of valuation, that the valuations for land and for improvements be separately stated on the roll. An assessment of improvements based upon their wreckage or removal value is not justifiable, but amounts to an unlawful discrimination against other types of property. *Mahoney* v. *City of San*

Diego, 198 Cal. 388. While improvements are to be assessed separately from the land, they must be assessed against the particular section, lot or tract upon which they are located. *Rimmer* v. *Hotchkiss,* 162 Cal. 385. Failure to assess land and improvements separately renders an assessment void. *California etc. R. R.* v. *Mecartney,* 104 Cal. 616; *Santa Clara County* v. *Southern Pacific Co.,* 118 U.S. 394.

The separate assessment of improvements as required by this section cannot affect the character of the improvements nor their ownership. *Outer Harbor Dock & Wharf Co.* v. *City of Los Angeles,* 49 Cal.App. 120.

Delayed assessment.—Assessment of land only does not prevent escape assessment on improvements subsequently discovered. *Jensen* v. *Byram,* 229 Cal.App.2d 651.

Improvements.—A strawberry plant is not a vine within the definition of improvements for the purpose of making separate assessments of land and improvements and may not be assessed separately from the land. *Monterey County* v. *Madolora,* 171 Cal.App.2d 840.

SEC. 14. **Property to be assessed where situated.** All property taxed by local government shall be assessed in the county, city, and district in which it is situated.

Property tax.—Government Code Section 26912 and former Revenue and Taxation Code Section 2237, now Revenue and Taxation Code Sections 93 and 95 et seq., which were enacted to implement Article XIII A of the Constitution and under which counties could levy the 1 percent property tax allowed under Article XIII A and distribute the revenues to local agencies but only to those agencies that levied a property tax during the 1977–78 fiscal year, did not violate the tax situs requirements of this section. As used therein, ''situated'' is synonymous with ''situs,'' meaning having such contacts as confer jurisdiction to tax, and under the tax situs rule, property situated in one county or city should be taxable in that county or city for local purposes for its actual value, and that local subdivision alone should have the benefit of this value for the purpose of raising its revenue. Under the challenged legislation, the only entity that imposed a property tax, with one exception, was the county, and the county had jurisdiction to tax real property situated within its borders. *City of Rancho Cucamonga* v. *Mackum,* 228 Cal.App.3d 929.

Decisions Under Former Article XIII, Section 10.

Effect of temporary removal.—The term ''situated'' connotes a more or less permanent location or situs and the requirement of permanency must attach before tangible property which has been removed from the domicile of the owner will attain a situs elsewhere. Thus, where personal property was removed from the State shortly prior to the first Monday in March for the purpose of sale and of reducing the owner's personal property tax and returned shortly thereafter, it remained taxable at its permanent situs in the State. The State's jurisdiction was not lost by virtue of the temporary excursion out of the State. *Brock and Co.* v. *Board of Supervisors,* 8 Cal.2d 286, 110 A. L. R. 700. Accord *Brock & Co.* v. *Board of Supervisors,* 32 Cal.App.2d 550.

Migrating animals.—Permanent situs, as distinguished from place of temporary sojourn, is the controlling force in the assessment of property in transit, migrating herds, or rolling stock. When cattle are brought permanently into one county, they are to be assessed there irrespective of the residence of the owner. *Rosasco* v. *Tuolumne County,* 143 Cal. 430. See also *People* v. *Townsend,* 56 Cal. 633.

Race horses are to be taxed in the county where they are raised, trained and located when not being raced. *Church* v. *City of Los Angeles,* 96 Cal.App.2d 89.

Water rights.—The situs of a right to divert water from a stream is at the point of diversion as distinguished from the location of the riparian lands as against which the right exists by virtue of grants from the owners *North Kern Water Storage Dist.* v. *Kern County,* 179 Cal.App.2d 268; *Spring Valley Water Co.* v. *Alameda County,* 88 Cal.App. 157. But cf. *San Francisco* v. *Alameda County,* 5 Cal.2d 243 and *Spring Valley Water Co.* v. *Alameda County,* 24 Cal.App. 278, 281.

The taxable situs of an appropriative water right is the point at which the water is diverted from its natural course and not where the water is received and measured by the owner. *Jurupa Ditch Co.* v. *San Bernardino County,* 256 Cal.App.2d 35.

A municipal corporation has the right to assess that part of the property of a water company located within the municipality although the system is appurtenant to land situated outside the municipality. *Temescal Water Co.* v. *Niemann,* 22 Cal.App. 174.

Intangibles.—Solvent credits are taxable at the residence of the creditor. *Pacific Coast etc. Society* v. *San Francisco,* 133 Cal. 14. Accounts receivable of a foreign corporation are not subject to taxation here merely because they arise out of the business of the corporation's California agency. *Westinghouse Electric & Mfg. Co.* v. *Los Angeles County,* 188 Cal. 491. Cf. *Wheeling Steel Corp.* v. *Fox,* 298 U.S. 193; *Newark Fire Insurance Co.* v. *State Board of Tax Appeals,* 307 U.S. 313.

Funds of a decedent are taxable in the county in which he resided at the time of his death, even though they are placed on deposit in a bank in another county. *San Francisco* v. *Lux,* 64 Cal. 481. Intangibles in ancillary administration in another state are not subject to taxation here. *Hinckley* v. *San Diego County,* 49 Cal.App. 668.

Intangibles held in trust are taxable at the residence of the trustee. See *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83; *Mackay* v. *San Francisco,* 128 Cal. 678; *Lowry* v. *Los Angeles County,* 38 Cal.App. 158. Cf. *First Trust & Savings Bank* v. *Los Angeles County,* 206 Cal. 240.

Franchise.—The franchise of a gas and electric company to erect poles in or along the streets is in its nature, when exercised, an easement in real property and taxable only where the right is actually exercised. *Stockton Gas & Electric Co.* v. *San Joaquin County,* 148 Cal. 313. Valuation of such franchises by the number of miles of line in each district is not prohibited by this section. *Kern River Co.* v. *Los Angeles County,* 164 Cal. 751.

Special types of property.—See Revenue and Taxation Code, Section 981 *et seq.*

Foreign aircraft.—The ''home port'' doctrine was held applicable to aircraft owned by a foreign airline and flown solely in foreign commerce between sovereign nations and, consequently, apportioned county and city property taxes levied thereon were invalid. *Scandinavian Airlines System, Inc.* v. *Los Angeles County,* 56 Cal.2d 11, cert. denied, 368 U.S. 899.

Flight equipment of air carrier.—Equipment in use in interstate and intrastate commerce is subject to an apportioned tax in California. ''Situated'' as used in this section and Revenue and Taxation Code section 404 does not connote a permanent situs, but only such as is sufficient to confer a jurisdiction to tax. *Zantop Air Transport, Inc.* v. *San Bernardino County,* 246 Cal.App.2d 433.

Vessel.—Liberian vessel in California port for nine years from the date of lay-up with apparent refusal to engage in foreign commerce held to have lost its status as one engaging in foreign commerce and to be subject to imposition of county property tax. *Continental Dredging Co.* v. *Los Angeles County,* 366 F.Supp. 1133. The taxable situs of a vessel is not determined by the owner's designation of a home port but depends upon the existence of sufficient contacts, such as the use and employment of the vessel within the jurisdiction and the opportunities, benefits or protection afforded the vessel by the jurisdiction, between the situs and the vessel to satisfy due process. Thus, a vessel registered in Alaska but moored in a California port for the taxable year and sold through escrow in California the next year was subject to imposition of county property tax for the taxable year. *San Diego County* v. *Lafayette Steel Co.,* 164 Cal.App.3d 690.

Cargo containers of shipping company.—Cargo containers used exclusively for transportation of cargo for hire in interstate and foreign commerce are subject to an apportioned local tax. The habitual presence of such containers creates a taxable situs, even though the identical containers are not within the county every day and even though none of the containers is continuously within the county. *Sea-Land Service, Inc.* v. *Alameda County,* 12 Cal.3d 772.

Apportionment.—Where the movable property of a domiciliary corporation engaged in interstate commerce has acquired an out of state tax situs, the county of domicile must apportion the tax by excluding such property values that are subject to potential out of state taxation. *Ice Capades, Inc.* v. *Los Angeles County,* 56 Cal.App.3d 745.

SEC. 15. **Taxable property physically damaged by disaster.** The Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates.

SEC. 16. **County boards of equalization.** The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county. Two or more county boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.

Except as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.

County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance.

The Legislature shall provide for: (a) the number and qualifications of members of assessment appeals boards, the manner of selecting, appointing, and removing them, and the terms for which they serve, and (b) the procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals boards.

Note.—On county boards of equalization see Revenue and Taxation Code, Section 1601 *et seq.*

Construction.—Local boards of equalization are established pursuant to this section to hear appeals of assessors' assessments. The appeals process is essential to filing a subsequent refund action, and failure to seek and to appear at a board hearing will usually result in the dismissal of the action for failure to exhaust an administrative remedy. *Sunrise Retirement Villa* v. *Dear,* 58 Cal.App.4th 948. A county board of supervisors sitting as a board of equalization as permitted by this section is a constitutional agency exercising quasi-judicial powers delegated to it by the Constitution, with special expertise in property valuation. Such a board's factual determinations are entitled on appeal to the same deference due a judicial decision, review under the substantial evidence standard. But courts are authorized to conduct an independent reassessment when a board purports to decide questions of law. *Mission Housing Development Company* v. *City and County of San Francisco,* 59 Cal.App.4th 55. While sitting as a board of equalization, the county board of supervisors is a constitutional agency exercising quasi-judicial powers delegated to it by the Constitution. County boards of equalization, not the courts, are the proper tribunals for exercising judgment on valuation questions concerning individual assessments on the local roll and on equalization of local assessments. *Plaza Hollister Limited Partnership* v. *San Benito County,* 72 Cal.App.4th 1.

Decisions Under Former Article XIII, Sections 9 and 9.5.

Power of Boards.—Under this section county boards of equalization have authority to adopt rules and regulations relative to applications for reductions in assessments. A rule to the effect that no such application may be granted unless the owner of the property, if within the county and able to attend, personally appears before the board is a reasonable one, and a property owner denied a hearing for failure to comply with such a rule is not entitled to any relief. *Williamson* v. *Payne,* 25 Cal.App.2d 497.

This section casts upon an appeals board the duty to equalize the valuation of the taxable property in the county; and, in discharging such duty, the board is exercising judicial functions, and its factual determinations are entitled to all the deference and respect due a judicial decision. *Hunt-Wesson Foods, Inc.* v. *Alameda County,* 41 Cal.App.3d 163.

County boards of equalization and assessment appeals boards have the right to pass upon their own jurisdiction in the first instance and, therefore, have the function of passing on the sufficiency of an application for assessment appeal which shall not be usurped by the assessor or the county counsel. *Midstate Theatres, Inc.* v. *Board of Supervisors,* 46 Cal.App.3d 204. County board of equalization, in a proceeding to reduce an escape assessment for the 1973–74 fiscal year pursuant to Revenue and Taxation Code Section 1605, could properly determine that it had no jurisdiction to investigate the correctness or accuracy of the original assessment for that year since the taxpayer had not filed an application for reduction of the assessment pursuant to Section 1603 of the Code. *Focus Cable of Oakland, Inc.* v. *Alameda County,* 173 Cal.App.3d 519.

Nature of determination by county board.—A determination of assessments by the county board of equalization is quasi-judicial in nature and is res judicata as far as the courts are concerned. *Quinn* v. *Aero Services Inc.,* 172 F.2d 157.

A decision of a county board of equalization is final, and subject to review by the courts only for excess of jurisdiction, errors of law, abuse of discretion, or insufficiency of the evidence. *Madonna* v. *San Luis Obispo County,* 39 Cal.App.3d 57.

A county board of equalization is a constitutional agency exercising quasi-judicial powers delegated to it by the constitution and its determination on a factual issue is entitled to all the deference and respect due a judicial decision. *Westlake Farms, Inc.* v. *Kings County,* 39 Cal.App.3d 179; *Shell Western E&P, Inc.* v. *Lake County,* 224 Cal.App.3d 974.

In reviewing the acts of the assessor, a county assessment appeals board acts in a quasi-judicial capacity, and it is its duty, not the court's, to determine the value of property for assessment purposes. *Domenghini* v. *San Luis Obispo County,* 40 Cal.App.3d 689.

Reassessment.—A county board of equalization which, pursuant to a rehearing ordered by the court, reassesses a water distribution system is not precluded by the principle of res judicata from setting the assessed valuation as originally, if it is based on a different and approved method of valuation. *Apple Valley Ranchos Water Co.* v. *San Bernardino County,* 63 Cal.2d 870.

Third-Party Applications.—There is no law authorizing the filing of a third-party application with an assessment appeals board to increase the assessment of another person's property. Granting such a hearing is entirely within the discretion of the board as a part of its power to equalize on its own motion assessments of property within the county. *Stevens* v. *Fox Realty Corp.,* 23 Cal.App.3d 199.

SEC. 17. **State board of equalization.** The Board of Equalization consists of 5 voting members: the Controller and 4 members elected for 4-year terms at gubernatorial elections. The State shall be divided into four Board of Equalization districts with the voters of each district electing one member. No member may serve more than 2 terms.

History.—The amendment of June 3, 1980, substituted the second sentence for the former second sentence, which provided that the Legislature shall redistrict the State after each decennial census into 4 districts as nearly equal in population as practical and provide for the election of a member from each district. The amendment of November 6, 1990, added the third sentence.

SEC. 18. **State board to measure and conform county assessment levels.** The Board shall measure county assessment levels annually and shall bring those levels into conformity by adjusting entire secured local

assessment rolls. In the event a property tax is levied by the state, however, the effects of unequalized local assessment levels, to the extent any remain after such adjustments, shall be corrected for purposes of distributing this tax by equalizing the assessment levels of locally and state-assessed properties and varying the rate of the state tax inversely with the counties' respective assessment levels.

Decisions Under Former Article XIII, Section 9.

Power of board.—The first proviso of this section is to be read distributively, as authorizing the State Board to increase or lower the entire assessment roll of any county but not the individual assessments, and the county boards to increase or lower individual assessments (other than assessments made by the state board) upon the roll of their respective counties but not the entire roll. *Wells Fargo & Co.* v. *State Board of Equalization,* 56 Cal. 194; *People* v. *Sacramento County,* 59 Cal. 321; *San Francisco & N. P. R. R.* v. *State Board of Equalization,* 60 Cal. 12; *Baldwin* v. Ellis, 68 Cal. 495.

An order of the state board increasing an assessment roll requires an increase in the valuation of all property on the roll other than money. *People* v. *Dunn,* 59 Cal. 328; *Schroeder* v. *Grady,* 66 Cal. 212. The assessment roll is not complete until the expiration of the time within which the State Board is empowered to increase or lower the assessment roll. *Koch* v. *Board of Supervisors,* 138 Cal.App. 343.

The state board has the power to subpoena a corporation's books and records as part of an intercounty equalization survey, even though the corporation owns no property subject to assessment by the board. *Redding Pine Mills, Inc.* v. *State Board of Equalization,* 157 Cal.App.2d 40 (cert. denied, 358 U.S. 818).

The state board's subpoena power extends to matters relevant to intercounty equalization surveys where the capitalization of income method is used. *California Portland Cement Co.* v. *State Board of Equalization,* 67 Cal.2d 578.

Mandamus.—The California Supreme Court refused to take original jurisdiction on a petition by the state board for a writ of mandate to direct a county to increase its entire assessment roll where a prior proceeding in mandamus brought by the county involving the same parties and the same issues was pending in the superior court. *People* v. *Tulare County,* 45 Cal.2d 317.

Full cash value.—The State Board of Equalization is not compelled to require county assessments to be made at 100% of market value; the board has the duty to equalize the valuation of taxable property in several counties and it may be equalized at a uniform fraction or ratio of its full cash or market value. *Hanks* v. *State Board of Equalization,* 229 Cal.App.2d 427.

SEC. 19. **State board to assess and tax property of public utilities.** The Board shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity. This property shall be subject to taxation to the same extent and in the same manner as other property.

No other tax or license charge may be imposed on these companies which differs from that imposed on mercantile, manufacturing, and other business corporations. This restriction does not release a utility company from payments agreed on or required by law for a special privilege or franchise granted by a government body.

The Legislature may authorize Board assessment of property owned or used by other public utilities.

The Board may delegate to a local assessor the duty to assess a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee.

Construction.—Under this section, the Board has the constitutional authority to assess railroads' properties, and the trial court is precluded from substituting its judgment for the Board's on questions of fact or discretionary appraisal decisions. A remand to the Board is generally required when the determination of refunds is dependent upon an exercise of valuation functions and does not involve mere mathematical computations. However, a limited remand rather than a broad, de novo remand to the Board is appropriate if the Board has failed to address or consider a specific question or questions. *Union Pacific Railroad Co.* v. *State Board of Equalization,* 231 Cal.App.3d 983.

The undefined term ''franchise,'' as used in the first paragraph of this section has long been equated with the intangible property of a corporation. The nature of a cellular telephone company's Federal Communications Commission station authorization is consistent with the common understanding of the term ''franchise,'' a grant by a government agency authorizing the sale of a product or service in a prescribed geographical area. Although a cellular telephone company's station authorization is intangible property and therefore, exempt from property taxation, such property may enhance the value of its taxable tangible property, and the intangible value may be reflected in the valuation of the taxable property. *Los Angeles SMSA Ltd. Partnership* v. *State Board of Equalization,* 11 Cal.App.4th 768.

The requirement in the first paragraph of this section that property shall be subject to taxation to the same extent and in the same manner as other property was not violated, even though the value of a cellular telephone company's Federal Communications Commission station authorization was reflected in its assessment by the Board while the values of the licenses of radio and television broadcasters in the same area were not assessed by the counties. The properties were all properly assessed at fair market value, since the broadcasters were not public utilities and therefore, not necessarily subject to the type of unit assessment authorized by this section for public utility property. *Los Angeles SMSA Ltd. Partnership* v. *State Board of Equalization,* 11 Cal.App.4th 768.

Utility property.—Although taxation must be uniform and the tax laws uniformly applied, as long as a tax system has a rational basis and is not arbitrary, it will be upheld despite the absence of precise, scientific uniformity of taxation. To establish a violation of equal protection, a taxpayer must show the intentional, systematic undervaluation of property similarly situated with other property assessed at its full value. *Los Angeles SMSA Ltd. Partnership* v. *State Board of Equalization,* 11 Cal.App.4th 768.

Unit valuation.—The Board may use the principle of unit valuation in valuing properties of an assessee that are operated as a unit in a primary function of the assessee. In valuing such properties, the Board must appraise them at their full values when put to their beneficial and productive uses. Unit taxation prevents real but intangible value from escaping assessment and taxation by treating public utility property as a whole, undifferentiated into separate assets such as land or buildings, or even separate kinds of assets such as realty or personalty. *GTE Sprint Communications Corp.* v. *Alameda County,* 26 Cal.App.4th 992.

Assessment of pipelines.—The prior, controlling judgment in *General Pipe Line Co. of California* v. *State Board of Equalization,* 5 Cal.2d 253, defining an intercounty pipeline within the meaning of the former Constitutional provision, was specific, detailed and limited, with no mention of real property interests of any kind. Thus, land and rights-of-way were excluded from the definition of a pipeline; and the Board could only assess those items deemed to constitute a private intercounty pipeline, including enumerated mechanical parts, fittings, and tanks necessary to its operation. *Southern Pacific Pipe Lines, Inc.* v. *State Board of Equalization,* 14 Cal.App.4th 42.

Decisions Under Former Article XIII, Section 14.

(A) SUMMARY OF CONSTITUTIONAL CHANGES RELATING TO TAXATION

Separation of sources.—Prior to 1911, the State Government was supported principally by an ad valorem tax on property. With exception of main line rights of way, roadbed, rails, rolling stock and franchises of intercounty railroads, assessed by the State Board of Equalization, all property was assessed for state taxation by the county assessors. State taxes, at rates fixed to meet biennial legislative appropriations, were collected by county tax collectors, along with local taxes, and deposited in county treasuries, from which they were transferred to the State treasury at semiannual settlements.

In 1910 Section 14 was added to Article XIII, and the provisions regarding assessment of railroad property by the State Board of Equalization were eliminated from Section 10 of that article. Under Section 14 a system of separation of sources of state and local revenues was established. This first became operative in 1911. Taxes were levied exclusively for state purposes as follows:

(1) On gross receipts from operations of railroad companies, gas and electric companies, telephone and telegraph companies, car companies and express companies, in lieu of all other taxes and licenses on the operative property of such companies, i.e., their property used exclusively in the business of producing the gross receipts.

(2) On gross premiums of insurance companies in lieu of all other taxes and licenses, except local taxes on real property.

(3) On capital stock of banks (measured by the pro rata book value of capital, surplus and undivided profits, less the assessed value of real estate) in lieu of all other taxes and licenses on such stock and on the banks except local taxes on real property.

(4) On all franchises, general, corporate and special, except the franchises held by the public utilities, insurance companies or banks otherwise taxed for state purposes. This tax was ad valorem on the basis of assessments of franchises made by the State Board of Equalization, and no local taxes on franchises were permitted.

There was no change in this tax system until 1926, when Section 15 was added to Article XIII, providing for a similar ''in lieu'' gross receipts tax on highway common carriers operating over regular routes or between fixed termini. This was followed by a further amendment in 1928, whereby Section 16 was added, providing for substitution of a tax ''according to or measured by'' net income for the bank share tax and the corporate franchise tax. The net income measure became effective in 1929.

In 1933 the article was amended by entire deletion of the system of ''in lieu'' gross receipts taxation on public utilities, and the substitution of provisions for the ad valorem assessment of all property of such companies and of intercounty pipe lines, flumes and canals by the State Board of Equalization, who are required to allocate the property for local taxation according to its situs.

Intangibles.—On November 4, 1924, Section 12½ was added to Article XIII of the Constitution authorizing the Legislature to provide for the taxation of intangibles in a manner, at a rate or in proportion to value different from any

other property, such taxes to be in lieu of all other property taxes. Enabling statutes with reference to the taxation of intangibles contemplated by this section were declared unconstitutional in March, 1928. *Arnold* v. *Hopkins*, 203 Cal. 553. Thereafter, the subject was covered in a different way through the adoption of Section 16, Article XIII of the Constitution on November 6, 1928. This section provided in part, that intangibles should be taxed upon their actual value at the rate of three-tenths of 1 percent, such tax to be in lieu of all other property taxes. Section 12½ was not repealed until June 27, 1933. At the same time Section 16, Article XIII was amended and provisions relating to the taxation of intangibles were eliminated, while new provisions relating to the taxation of personal property, including intangibles, were added to Section 14, Article XIII.

Insurance tax.—The provisions of this section relating to the taxation of insurance companies (see 1936 Revenue Laws, p. 46), which are no longer effective except as to business done prior to January 1, 1938, specifically allowed a deduction on account of reinsurance in companies authorized to do business in California, and were construed to require the payment of tax by such reinsuring companies on premiums received by them for the reinsurance of risks in California, even though the reinsurance contract was executed and carried into effect wholly without the State. *Connecticut General Life Insurance Co.* v. *Johnson*, 3 Cal.2d 83. As so construed said provisions were held invalid under the Fourteenth Amendment to the Federal Constitution. *Connecticut General Life Insurance Co.* v. *Johnson*, 303 U.S. 77. As a result of this decision Section 14¾ was adopted, under which no deduction was allowed on account of reinsurance, and premiums received for reinsurance were specifically excluded from the tax and this same method is now embodied in Section 14⅘.

(B) CONSTRUCTION OF PROVISIONS OF SECTION

Utility property.—This section contemplates that utility property and common property will bear the same burden of taxation in proportion to value. But the fact that the State Board of Equalization is given the duty of assessing utility property and that it values such property as a whole indicates that its assessments might differ from the values that would be adopted by the local assessors if they were assessing the property. *Southern California Telephone Co.* v. *Los Angeles County*, 45 Cal.App.2d 111. This section does not require public utility property to be valued on the same basis as other property, and thus does not require the application to public utility property of the valuation rollback provisions of Section 2(a) of Article XIII A to the unit taxation of such property. The section simply specifies that public utility property, after it has been placed on the local tax rolls, be levied on at the same rate as locally assessed property. *ITT World Communications, Inc.* v. *City and County of San Francisco*, 37 Cal.3d 859.

Automobile licenses.—Under the provisions of this section and Section 14½ of this Article, the exemption from license charges on automobiles of public utilities, given by the gross receipts tax, terminated on December 31, 1934. Thus a public utility company could obtain registration certificates for its automobiles for 1935 only upon payment of registration fees and weight charges provided by Sections 77a and 77c of the Vehicle Act for the entire year 1935, notwithstanding that it had paid the gross receipts tax assessed against it for the Fiscal Year 1934–1935. *Pacific Electric Railway Co.* v. *Department of Motor Vehicles*, 4 Cal.2d 181.

Assessment of pipe lines.—It is the duty of the State Board of Equalization under the provisions of this section to assess all intercounty oil pipe lines, whether such property is used for private or public utility purposes. A ''Pipe Line'' includes not only the pipe, but the appurtenances necessary to its proper functioning as such. *General Pipe Line Co. of California* v. *State Board of Equalization*, 5 Cal.2d 253.

Application not limited to public utilities.—This section is not limited to public service corporations and it applies, accordingly, to the railroad cars of a private car company that is not a common carrier. The classification of private cars for tax purposes, as provided by the Private Car Tax Act, is authorized by this section and is not invalid under Section 10 of Article XIII, Section 37 of Article XIII, or the equal protection or uniformity provisions of the Federal and State Constitutions, respectively. *People* v. *Keith Railway Equipment Co.*, 70 Cal.App.2d 339.

Stage Line.—As used in this section with respect to the assessment of express companies, truck lines carrying property only, and not passengers, constitute stage lines. *California Motor Express, Ltd.* v. *State Board of Equalization*, 133 Cal.App.2d 237.

Municipal license taxes.—A city's business license tax ordinance imposing a tax on telephone companies different from and at a higher rate than that imposed upon mercantile, manufacturing and business corporations within the city violates this section. A provision of the ordinance imposing a special tax on pay telephones also violates this section by requiring telephone companies to pay two license taxes on the privilege of engaging in business in the city while only one tax is imposed on mercantile, manufacturing and business corporations. *City of Oceanside* v. *Pacific Telephone and Telegraph Co.*, 134 Cal.App.2d 361. A city's business license tax ordinance imposing a tax on gas and electric companies at a higher rate than that imposed on grocers and automobile dealers within the city does not violate this section where a rational basis therefor, that grocery stores and automobile dealerships are low profit margin businesses, is demonstrated by the city. *City of Livermore* v. *Pacific Gas & Electric Co.*, 120 Cal.App.3d 1001.

SEC. 20. **Tax rates and bonding limits for local governments.** The Legislature may provide maximum property tax rates and bonding limits for local governments.

SEC. 21. **Annual levy of school district taxes.** Within such limits as may be provided under Section 20 of this Article, the Legislature shall provide for an annual levy by county governing bodies of school district taxes

sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions.

SEC. 22. **Property taxes; limitation.** Not more than 25 percent of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof.

SEC. 23. **Change in State boundaries.** If State boundaries change, the Legislature shall determine how property affected shall be taxed.

SEC. 24. **Legislature may not tax for municipal purposes.** The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.

Money appropriated from state funds to a local government for its local purposes may be used as provided by law.

Money subvened to a local government under Section 25 may be used for State or local purposes.

Construction.—This section does not of itself vest a local governing body with inherent taxing power. The power to tax comes from the Legislature through its enactment of general laws that enable the local governing body to collect the taxes specified in those laws. An exception exists with respect to charter cities and counties. *California Building Industry Ass'n.* v. *Governing Board of the Newhall School District*, 206 Cal.App.3d 212. Pursuant to this section, the taxing authority of local governments exists only to the extent granted by the Legislature, which may prescribe the terms and conditions under which local governments may exercise that authority. These may include the imposition of a requirement of prior approval by the local electorate. *Santa Clara County Local Transportation Authority* v. *Guardino*, 11 Cal.4th 220; *McBrearty* v. *City of Brawley*, 59 Cal.App.4th 1441. Government Code Section 26912 and former Revenue and Taxation Code Section 2237, now Revenue and Taxation Code Sections 93 and 95 et seq., which were enacted to implement Article XIII A of the Constitution and under which counties could levy the 1 percent property tax allowed under Article XIII A and distribute the revenues to local agencies but only to those agencies that levied a property tax during the 1977–78 fiscal year, was not unconstitutional under this section. Revenue and Taxation Code Section 93(b), which provides that a county must levy an ad valorem tax on taxable assessed value, does not itself impose the tax, but properly delegates that function to the counties. The maximum rate of taxes is established in Article XIII A, Section 1 of the Constitution, not in the statute, and this section provides that the Legislature may authorize local governments to impose taxes for local purposes. *City of Rancho Cucamonga* v. *Mackzum*, 228 Cal.App.3d 929. This section does not preclude the State from shifting property tax revenues from local governments to schools. Article XIII A, Section 1, Subdivision (a), which provides that property taxes shall be apportioned according to law, removed any doubt concerning the State's power to allocate property tax revenue among entities funded by such revenues. *Los Angeles County* v. *Sasaki*, 23 Cal.App.4th 1442.

Decisions Under Former Article XIII, Section 37.

Construction.—This section does not require a city to spend all its tax funds during the year for which they are collected. Consequently, a tax is not invalid by reason of the fact that the tax rate is far in excess of that required to meet estimated expenditures. *Rancho Santa Anita, Inc.* v. *City of Arcadia*, 20 Cal.2d 319.

Municipal taxation.—This section delegates the whole subject of county and municipal taxation to the corporate authorities thereof; and the Legislature has no power to impose any tax whatever within those territories for local purposes. *San Francisco* v. *Liverpool etc. Insurance Co.*, 74 Cal. 113.

The term ''corporate authorities'' in this section, as applied to municipalities, must be construed as referring to the legislative department of the municipality only. Accordingly, the power to levy a tax cannot be vested in any other authority of the local corporation than the body in which is vested its legislative power. *Board of Education* v. *Board of Trustees*, 129 Cal. 599, 604.

The power of a county or other public corporation to impose taxes is only that which is granted by the Legislature. *Hughes* v. *Ewing*, 93 Cal. 414.

The Constitution, by prohibiting the Legislature from imposing taxes for municipal purposes and by authorizing cities of sufficient population to adopt freeholder's charters, vests in such cities, by necessary implication, the power of taxation. *Security Savings Bank* v. *Hinton*, 97 Cal. 214.

A local board cannot be authorized to impose taxes and assessments for a public (as distinguished from local) purpose *People* v. *Parks*, 58 Cal. 624.

The Municipal Investment Bond Act (Stats. 1915, p. 109), which authorizes a municipal corporation to issue bonds to purchase improvement district bonds of the city and requires the Investment Bond Fund to be used for investment and reinvestment only, contravenes this section. The act constitutes an attempt to confer upon municipalities the power and authority to levy taxes for a purpose which in no way benefits the municipality or its taxpayers and which cannot be held to be municipal. *City of Redwood City* v. *Myers*, 7 Cal.2d 283.

Public and local purpose.—An act imposing a license fee on the business of motor transportation, the money to be divided between the counties and the State, is not unconstitutional under this section as it carries out a state purpose. *Bacon Service Corp.* v. *Huss,* 199 Cal. 21.

The provisions of the Improvement Bond Act of 1915 (now Streets and Highways Code Section 8500, et seq.) providing for the levy of municipal taxes to pay the purchase price of property sold to the city for delinquent assessments on improvement bonds, do not impose a tax upon the property within the city for a municipal purpose in violation of this section. These sections of the Bond Act merely fix the liability of the city to pay for the property purchased when sold because of delinquent assessments, and require the city to levy and collect taxes in an amount suitable for such purpose. *American Co.* v. *City of Lakeport,* 220 Cal. 548; *Union Safe Deposit Bank* v. *City of Menlo Park,* 3 Cal.2d 264; *Thompson* v. *City of La Mesa,* 9 Cal.App.2d 542.

Formation of health districts is a public purpose. *Stuckenbruck* v. *Board of Supervisors,* 193 Cal. 506, *Semble.* Water Storage Districts, *Tarpey* v. *McClure,* 190 Cal. 593; *Henshaw* v. *Foster,* 176 Cal. 507.

Generally the question of sanitation is a municipal affair. But in many instances it is one of broader scope which cannot be handled adequately by the municipal authorities of a single town. Hence, it falls within the class of public purposes such as irrigation and reclamation, for which the Legislature has the undoubted authority to provide governmental agencies or districts. *Pixley* v. *Saunders,* 168 Cal. 152, 160. See also, *In re Werner,* 129 Cal. 567.

As to how far the Legislature may go in the exercise of its power of providing for the general welfare of the state in requiring acts of counties which involve the assessment and collection of taxes for their fulfillment, see *Macmillan Co.* v. *Clarke,* 184 Cal. 491, holding that the Legislature could require the furnishing by counties of free textbooks in high schools. See also, *People* v. *Lodi High School District,* 124 Cal. 694; *McCabe* v. *Carpenter,* 102 Cal. 469; *Boss* v. *Lewis,* 33 Cal.App. 792; *Gadd* v. *McGuire,* 69 Cal.App. 347.

The provisions of the Santa Barbara County Water Agency Act giving the agency the power to levy ad valorem taxes on all property in the agency, including all property in the city of Santa Barbara and in four county water districts, do not violate this section, since the purpose served by the agency, the conservation and beneficial use of water resources, is more than a municipal purpose. This section is also not violated by a provision of the act giving the agency the power to levy a special tax solely within a defaulting member unit to cure the defaulted obligation owing to the agency, such levy being a protection for the agency and not local as to the member units. *Santa Barbara County Water Agency* v. *All Persons,* 47 Cal.2d 699.

School taxes.—School districts are a part of the county organization. Hence, the Legislature cannot levy a tax upon the property of the inhabitants of a school district for school purposes. Nor can the Legislature prescribe a procedure for the levying of such a tax without leaving some discretion in regard to it to the local authorities. *McCabe* v. *Carpenter,* 102 Cal. 469. See also, *Hughes* v. *Ewing,* 93 Cal. 414.

License taxes.—License taxes for revenue are within the prohibition of this section. *Ex parte Jackson,* 143 Cal. 564. Such taxes may be imposed by a municipality. *In re Guerrero,* 69 Cal. 88. License taxes have been approved in the following instances: sheep business (*El Dorado County* v. *Meiss,* 100 Cal. 268); liquor vending (*Ventura County* v. *Clay,* 112 Cal. 65; *Ex parte Mansfield,* 106 Cal. 400; *Sacramento* v. *Dillman,* 102 Cal. 107; *In re Lawrence,* 69 Cal. 608; but see, *Merced County* v. *Helm,* 102 Cal. 159).

The Legislature cannot impose a license tax for the benefit of the county on those engaged in certain trades within the county, *People* v. *Martin,* 60 Cal. 153; *San Francisco* v. *Liverpool etc. Insurance Co.,* 74 Cal. 113.

But the section does not restrain the Legislature from passing an act prohibiting counties and municipalities from levying license taxes for revenue. *Ex parte Pfirrmann,* 134 Cal. 143.

Taxes.—The Legislature, in prescribing a minimum wage for state and local public works, is not imposing a tax within the meaning of this section. *Metropolitan Water District of Southern California* v. *Whitsett,* 215 Cal. 400.

It is not contrary to the provisions of this section for the Legislature to provide that property remain subject to assessments levied against it by an improvement district until such assessments are paid, even though a city enters and devotes the land to public use, since it is not the imposition of a tax on the city by the Legislature but a provision whereby improvement districts may be created. A city entering upon property within a district created under the Acquisition and Improvement Act of 1925 (Stats. 1925, p. 849) after the imposition of assessments is in the same position that it would occupy if it had owned the property and consented to the obligation at the time it was created. *City of Pasadena* v. *Chamberlain,* 1 Cal.App.2d 125.

Tax appropriated to cities and counties for state purposes.—The provision of the Vehicle License Fee Law (Revenue and Taxation Code Section 10701, et seq.) which appropriates a certain percentage of the revenues derived from the tax to cities and cities and counties and expressly provides that the moneys shall be expended for law enforcement and the regulation and control and fire protection of highway traffic, does not violate this section prohibiting the Legislature from taxing the cities or counties, or the inhabitants thereof, for local purposes. The purposes enumerated in the statute are state purposes. This constitutional provision does not prohibit state taxation for state purposes, even though, under some circumstances, the purpose could also be local. *City of Los Angeles* v. *Riley,* 6 Cal.2d 621. Section 9(c) of said act, which appropriates a certain percentage of the revenues derived from the tax to counties and cities and counties but fails to define expressly the purposes for which the counties must expend the moneys so allocated to them, does not violate this section. Section 9(c) must be construed together with the limitation found in the Constitution and as so construed the section appropriates money to counties for state purposes. *Los Angeles County* v. *Riley,* 6 Cal.2d 625.

Full cash value.—Article XI, Section 12, does not prohibit the assessment of taxable property by a county at a uniform fraction or ratio of its full cash or market value. *Michels* v. *Watson,* 229 Cal.App.2d 404. (Section 12 of Article XI was renumbered Section 37 of Article XIII by amendment adopted in 1970.)

The requirement that property shall be assessed ''at its full cash value'' must be interpreted in the light of the settled meaning of the predecessor statute to authorize assessment at a uniform fraction of full cash value. *Sacramento County* v. *Hickman,* 66 Cal.2d 841.

The assessor correctly considered the full economic rental value of real property subject to a lease even though the actual rental income was below the economic rental. *Clayton* v. *Los Angeles County,* 26 Cal.App.3d 390.

''Full cash value'', as used in this section, requiring that, with certain exceptions, property be taxed at its ''full cash value,'' means market value. *Union Oil Co.* v. *Ventura County,* 41 Cal.App.3d 432.

Delegation of taxing power.—The power of a general law city to assess and collect taxes for local and municipal purposes is vested in the city council, which has no authority to delegate or abandon such power to the city electorate. A proposed ordinance providing for the assessment and collection of such taxes submitted by the city council to the electorate through the initiative process is a nullity. *Myers* v. *City Council of Pismo Beach,* 241 Cal.App.2d 237.

Vessels.—Unless an ocean-going vessel has an actual situs elsewhere, the county of its home port has the power to assess and collect tax based upon its full cash value, although the vessel may be outside the state for part of the tax year. *Star Kist Foods* v. *Byram,* 241 Cal.App.2d 313.

SEC. 25. **Legislature to reimburse local governments.** The Legislature shall provide, in the same fiscal year, reimbursements to each local government for revenue lost because of Section 3(k).

SEC. 26. **Income tax.** (a) Taxes on or measured by income may be imposed on persons, corporations, or other entities as prescribed by law.

(b) Interest on bonds issued by the State or a local government in the State is exempt from taxes on income.

(c) Income of a nonprofit educational institution of collegiate grade within the State of California is exempt from taxes on or measured by income if both of the following conditions are met:

(1) The income is not unrelated business income as defined by the Legislature.

(2) The income is used exclusively for educational purposes.

(d) A nonprofit organization that is exempted from taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, is exempt from any business license tax or fee measured by income or gross receipts that is levied by a county or city, whether charter or general law, a city and county, a school district, a special district, or any other local agency.

History.—The amendment of June 7, 1994, added "both the . . . met" after "if", created new paragraphs with paragraphs (1) and (2); substituted "The income" for "it" after "(1)" and substituted a period for ", and" after "Legislature" in paragraph (1), and substituted "The income" for "it" after "(2)" in paragraph (2) of subdivision (c); and added subdivision (d).

Construction.—A fee imposed on nonprofit organizations by a county based upon a percentage of their gross receipts earned from bingo games violated subdivision (d) of this section. *Arden Carmichael, Inc.* v. *Sacramento County,* 79 Cal.App.4th 1070.

Decisions Under Former Article XIII, Section 11.

Legislative power.—This section gives the Legislature the power in taxing income derived from wagering transactions to disallow any deduction for losses sustained in defined illegal activities. *Hetzel* v. *Franchise Tax Board,* 161 Cal.App.2d 224.

SEC. 27. **Taxation of banks and corporations.** The Legislature, a majority of the membership of each house concurring, may tax corporations, including State and national banks, and their franchises by any method not prohibited by this Constitution or the Constitution or laws of the United States. Unless otherwise provided by the Legislature, the tax on State and national banks shall be according to or measured by the net income and shall

be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees.

History.—The amendment of June 8, 1976, substituted "a majority" for "two-thirds" in the first sentence.

Decisions Under Former Article XIII, Section 16.

Editorial Note.—This section was proposed at a special legislative session in September, 1928. A tax commission appointed by the Governor under Chapter 455, Statutes of 1927, p. 781, had urged immediate adoption of the amendment as an emergency measure to provide new methods for preferential taxation of intangibles (for present constitutional provisions relating to taxation of intangibles see Section 14, Art. XIII) and for taxation of banks and corporate franchises. At that time the taxation of banks and corporate franchises was covered by subdivisions (c) and (d) of Section 14, Art. XIII. These provisions were not repealed until June 27, 1933.

After the adoption of this section there was no further assessment of bank shares under Section 14(c), Art. XIII, nor, generally speaking, of corporate franchises under Section 14(d), Art. XIII. (For text of Section 14, Art. XIII, prior to 1933 amendment, see 1936 Revenue Laws, p. 720.) In March, 1929, the "Bank and Corporation Franchise Tax Act" (Statutes 1929, p. 19) was passed to carry into effect the new method of bank and corporation taxation provided by this constitutional amendment.

For a thorough analysis of the legal aspects of a system of taxation "according to or measured by" net income, with particular reference to the taxation of national banks, see Traynor, *National Bank Taxation in California,* 17 Cal.L.Rev. 83, 232, 456.

Interest from tax exempt bonds.—In providing for a franchise tax on corporations "according to or measured by" their net income, it is permissible to provide that interest from tax exempt bonds shall be included within the tax base although such interest could not be directly taxed. *Pacific Co.* v. *Johnson,* 212 Cal. 148, aff'd 285 U.S. 480; *Security-First Nat'l Bank* v. *Franchise Tax Board,* 55 Cal.2d 407, appeal dismissed 368 U.S. 3.

Franchise from State immaterial.—It is not necessary for banks or savings and loan associations to hold franchises issued by the State to make them liable for taxes under this section and the Bank and Corporation Franchise Tax Act. *First Federal S. & L. Ass'n* v. *Johnson,* 49 Cal.App.2d 465.

Taxation of bank safe deposit boxes.—Safe deposit boxes and their metal containers owned by a bank and located therein, which are not permanently affixed to the realty and not essential to general banking functions are not fixtures and cannot therefore be taxed as real property. *Pajaro Valley Bank* v. *Santa Cruz County,* 207 Cal.App.2d 621.

Neither the weight of tiers of safe deposit boxes in a bank nor their placement unattached in a vault are sufficient, as a matter of law, to classify them as fixtures. *United States National Bank of San Diego* v. *Los Angeles County,* 234 Cal.App.2d 195.

Prepayment of estimated tax.—Since Sections 25441 and 25563 of the Revenue and Taxation Code do not impose a new tax on corporations, but merely accelerate the time of payment of a previously imposed tax, they do not violate this constitutional provision by virtue of having been passed by less than a two-thirds vote of all elected members of the Legislature. *Jones-Hamilton Co.* v. *Franchise Tax Board,* 268 Cal.App.2d 343.

SEC. 28. **Taxation of insurance companies.** (a) "Insurer," as used in this section, includes insurance companies or associations and reciprocal or interinsurance exchanges together with their corporate or other attorneys in fact considered as a single unit, and the State Compensation Insurance Fund. As used in this paragraph, "companies" includes persons, partnerships, joint stock associations, companies and corporations.

(b) An annual tax is hereby imposed on each insurer doing business in this state on the base, at the rates, and subject to the deductions from the tax hereinafter specified.

(c) In the case of an insurer not transacting title insurance in this state, the "basis of the annual tax" is, in respect to each year, the amount of gross premiums, less return premiums, received in such year by such insurer upon its business done in this state, other than premiums received for reinsurance and for ocean marine insurance.

In the case of an insurer transacting title insurance in this state, the "basis of the annual tax" is, in respect to each year, all income upon business done in this state, except:

(1) Interest and dividends.

(2) Rents from real property.

(3) Profits from the sale or other disposition of investments.

(4) Income from investments.

''Investments'' as used in this subdivision includes property acquired by such insurer in the settlement or adjustment of claims against it but excludes investments in title plants and title records. Income derived directly or indirectly from the use of title plants and title records is included in the basis of the annual tax.

In the case of an insurer transacting title insurance in this state which has a trust department and does a trust business under the banking laws of this state, there shall be excluded from the basis of the annual tax imposed by this section, the income of, and from the assets of, such trust department and such trust business, if such income is taxed by the state or included in the measure of any tax imposed by this state.

(d) The rate of the tax to be applied to the basis of the annual tax in respect to each year is 2.35 percent.

(f) The tax imposed on insurers by this section is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property, except:

(1) Taxes upon their real estate.

(2) That an insurer transacting title insurance in this state which has a trust department or does a trust business under the banking laws of this state is subject to taxation with respect to such trust department or trust business to the same extent and in the same manner as trust companies and the trust departments of banks doing business in this state.

(3) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state; so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind shall be imposed upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this paragraph (3) of subdivision (f).

The provisions of this paragraph (3) of subdivision (f) shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state or foreign country in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration in determining the propriety and extent of retaliatory action under this paragraph (3) of subdivision (f).

For the purposes of this paragraph (3) of subdivision (f) the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

The provisions of this paragraph (3) of subdivision (f) shall also be applicable to reciprocals or interinsurance exchanges and fraternal benefit societies.

(4) The tax on ocean marine insurance.

(5) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.

(6) That each corporate or other attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon corporations or others doing business in the state, other than taxes on income derived from its principal business as attorney in fact.

A corporate or other attorney in fact of each exchange shall annually compute the amount of tax that would be payable by it under prevailing law except for the provisions of this section, and any management fee due from each exchange to its corporate or other attorney in fact shall be reduced pro tanto by a sum equivalent to the amount so computed.

(g) Every insurer transacting the business of ocean marine insurance in this state shall annually pay to the state a tax measured by that proportion of the underwriting profit of such insurer from such insurance written in the United States, which the gross premiums of the insurer from such insurance written in this state bear to the gross premiums of the insurer from such insurance written within the United States, at the rate of 5 per centum, which tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such insurer, except taxes upon real estate, and such other taxes as may be assessed or levied against such insurer on account of any other class of insurance written by it. The Legislature shall define the terms ‘‘ocean marine insurance’’ and ‘‘underwriting profit,’’ and shall provide for the assessment, levy, collection and enforcement of the ocean marine tax.

(h) The taxes provided for by this section shall be assessed by the State Board of Equalization.

(i) The Legislature, a majority of all the members elected to each of the two houses voting in favor thereof, may by law change the rate or rates of taxes herein imposed upon insurers.

(j) This section is not intended to and does not change the law as it has previously existed with respect to the meaning of the words ''gross premiums, less return premiums, received'' as used in this article.

History.—The amendments of June 8, 1976, deleted the former subdivision (e), deleted the former second sentence of subdivision (g), and substituted "a majority" for "two-thirds" in the first sentence of subdivision (i).

Construction.—The intent of the framers of the June 8, 1976, amendment repealing former subdivision (e), which provided for the principal office deduction for real estate taxes, was that, if adopted, the amendment should be effective as of January 1, 1977. As the provisions on taxation in the Constitution are a limitation on the Legislature's authority to impose taxes or to grant tax deductions, not a grant of authority, the adoption of the amendment did not affect the Legislature's power to grant the deduction for the remainder of 1976. *California Compensation And Fire Co.* v. *State Board of Equalization,* 132 Cal.App.3d 25.

Construction.—Tax imposed on workers' compensation carriers by State of Arizona is not a special purpose obligation or assessment within the meaning of this article in that such tax is not a charge for benefits conferred upon the taxpayer, which is the distinction between assessments and taxes. *American Alliance Insurance Co.* v. *State Board of Equalization,* 134 Cal.App.3d 601.

Gross premiums.—The imposition of taxes on two foreign mail order insurers on the basis of total premiums collected from California insureds was proper where insurers' resident agents conducted a substantial number of investigations of claims and where such conduct was critical to the business conducted by the insurers in the State. The importance of foreign insurers' activities in the taxing state to the realization and continuance of their businesses therein is a significant factor in evaluating the contacts between the insurers and the state, and the insurers did not meet their burden of showing that the unapportioned tax was out of all proportion to the conduct of their businesses in the state, so as to lead to grossly disproportionate results. *Illinois Commercial Men's Association* v. *State Board of Equalization,* 34 Cal.3d 839.

Gross premium insurance taxes imposed on an insurer's ''minimum premium plan,'' which allowed the policyholder to pay claims up to a certain point, thereby reducing the amount of actual premiums paid, did not violate the insurer's equal protection rights, even though other insurers' similar plans under ''Taft-Hartley trusts,'' which are funded by employer contributions but are operated for the ''sole and exclusive benefit'' of the employees, were not taxed. At most, the Board made an erroneous application of its law, arising from the fact that federal law governed Taft-Hartley trusts. Thus, there was not the type of invidious discrimination against which the equal protection guaranty is meant to protect. *Great-West Life Assurance Company* v. *State Board of Equalization,* 19 Cal.App.4th 1553.

Gross premiums do not include amounts of health care claims paid by an employer to its employees under a ''split funded group plan'', since the insurer was not obligated to pay the claims if the employers failed to do so, there was no reversion to standard coverage if employers failed to pay, and employers never owed or paid conventional premiums. Absent such factors, the obligations of the insurer and employers were not inextricably intertwined, and employers did not act as ''mere agents'' of insurer for collecting premiums. *Aetna Life Insurance Co.* v. *State Board of Equalization,* 11 Cal.App.4th 1207.

Gross premiums do not include amounts of health care claims paid by employers who assumed the obligation to pay their employees' claims up to an annual ''trigger-point'' amount. As to those claims, the employers were acting as separate insurers and were not agents of the insurer, even though the insurer retained control over administration of the plans. The insurer assumed no primary or secondary liability for payment of claims below the annual trigger point, and, in the event of default by an employer, the contracts did not automatically revert to conventional policies. In addition, the trigger point exceeded the actuarially expected level of claims, which shifted an insurance risk to the employers. *Prudential Insurance Co.* v. *State Board of Equalization,* 21 Cal.App.4th 458. An insurer was entitled to a refund of taxes it paid on claims for which the insured employer was liable under a plan by which the insurer provided administrative services, but was only liable for claims to the extent they exceeded a trigger point of 125 percent of the actuarially predicted level. The fact that the insurer provided administrative services did not mean the employer was funding below trigger point claims as an agent of the insurer rather than a separate insurer. Under the plan, the insurer's risk was minimal, while the employer assumed the risk claims would exceed the actuarially expected level. And, the obligations of the insurer and employer were not ''inextricably intertwined'' so as to make the employer a mere agent of the insurer. *Lincoln National Life Insurance Co*. v. *State Board of Equalization,* 30 Cal.App.4th 1411.

Insurance premiums tax.—The legislative power to change this tax can be exercised through an initiative. Therefore, Revenue and Taxation Code Section 12202.1, enacted as part of Proposition 103 and delegating the power to raise the rate of the tax to the State Board of Equalization, is valid. The Legislature need not prescribe the exact method by which a tax is to be fixed, but may delegate to its taxing officers the power to adopt a suitable method. The essential requirement is the Legislature's specification of a standard to which the Board is directed to conform; but it may leave to the Board to determine how to implement the standard. *State Compensation Insurance Fund* v. *State Board of Equalization,* 14 Cal.App.4th 1295.

Income.—Subdivision (c), which provides that title insurers are taxed on the basis of all income upon business done in the state, does not define the term ''all income,'' nor do related statutes. In light of Revenue and Taxation Code Section 17071, defining ''gross income'' in terms of federal law, it is appropriate for courts to look to state and federal definitions of ''income.'' So doing, payments of title insurance claims made by underwritten title companies, pursuant to underwriting contracts between title insurers and the companies, were not income for purposes of calculating the insurers' tax liability. When a company fulfilled its obligation to the insurer by paying its portion of the claim, the insurer did not realize any additional gain. Since there was no gain, there was no income. *Title Insurance Co. of Minnesota* v. *State Board of Equalization,* 4 Cal.4th 715.

Doing business.—Two foreign insurers who solicited business by mail from outside the state were doing business in the State where they employed agents within the State to perform important functions, such as investigation of and settlement of claims, in connection with the administration of policies issued. The fact that such agents were independent contractors was of little significance for purposes of determining whether requirements for due process were met where character and extent of insurers' activities in the State were sufficient to form the ''definite link'' and ''minimum connection'' required. *Illinois Commercial Men's Association* v. *State Board of Equalization,* 34 Cal.3d 839.

Tax in lieu of other taxes.—Doing insurance business that is subject to the gross premiums tax confers upon the insurer a status that entitles it to the broad exemption from paying state and local taxes of any kind except real property and motor vehicle taxes and fees. Thus an insurance company is exempt from taxes imposed by a city on revenues derived from the rental of an office building and operation of a parking lot owned by it and from a tax on use of electric power in the building. *Mutual Life Ins. Co.* v. *City of Los Angeles, Mutual Life Ins. Co.* v. *State Board of Equalization,* 50 Cal.3d 402.

ERISA.—Section of Employee Retirement Income Security Act which prevents states from regulating benefit plans simply because they provide insurance for covered employees did not preclude Board from applying gross premiums tax to benefits fiduciaries paid employees under plans, where tax was imposed on insurance companies, not benefit plans. *General Motors Corp.* v. *State Board of Equalization,* 815 Fed.2d 1305, 824 Fed.2d 816.

Estoppel.—The State is not estopped to collect from foreign mail order insurers taxes for past years, despite a letter by a Department of Insurance official which stated an understanding that state law could not constitutionally regulate mail order insurers, where the letter did not refer to taxation and could not have been relied upon as referring to it. And the insurers could not have relied on any such representation since the letter was not written by an official of the board authorized to assess the tax, since the insurer never sought a ruling or made any inquiry of the board, and since the letter referred only to an ''understanding'' and could not be interpreted as a definitive ruling on the question of taxation. A failure to collect a tax authorized by a statute is insufficient to justify estoppel, even if the taxpayer relies on an erroneous construction of a statute by an official. *Illinois Commercial Men's Association* v. *State Board of Equalization,* 34 Cal.3d 839.

Sales taxes.—Neither Article XIII, Section 28(f) nor former Article XIII, Section 14⅘ forbids the imposition of sales tax on retail sales of personal property to insurance companies. *Occidental Life Insurance Co.* v. *State Board of Equalization,* 135 Cal.App.3d 845.

Decisions Under Former Article XIII, Section 14⅘.

Construction.—The gross premiums tax applies to all insurance companies and associations, whether fire or life, and whether doing business as stock concerns or mutual concerns. *Northwestern Mutual Life Insurance Co.* v. *Roberts,* 177 Cal. 540.

Although in lieu of taxes on personal property, it is not, like the public utility gross receipts tax (prior to the amendment of Section 14 in 1933), a direct tax on property, but is a franchise tax exacted for the privilege of doing business in the State. Thus, ownership by the insurance company, and not the use to which the property is being put, is the factor determining freedom of personal property from local taxation. *Consolidated Title Security Co.* v. *Hopkins,* 1 Cal.2d 414.

The tax imposed upon insurance companies is not a property tax but an excise tax for the privilege of doing business in the year preceding that in which the tax is assessed. Consequently, an insurance company is liable for a tax based upon its gross premiums received during a calendar year, notwithstanding the fact that on the first Monday of March of the following year the company was not doing business. Penalties accruing after the appointment of a liquidator are properly charged to the company. *Carpenter* v. *Peoples Mutual Life Insurance Co.,* 10 Cal.2d 299.

Even prior to the enactment in 1937 of the provision of the Revenue and Taxation Code expressly authorizing such procedure, an assessment could be made in *any* year subsequent to that in which the company ceased doing business. The tax is an obligation of the taxpayer irrespective of its assessment by the State Board of Equalization, at least in a case in which the failure to levy the assessment at the proper time was due to the taxpayer's violation of its statutory duty to file the statements required of it and there is no showing that the delay in assessment has operated to its prejudice. *Carpenter* v. *Pacific Coast Insurance Assn.,* 10 Cal.2d 304.

Sections 685 and 685.3 of the Insurance Code, which impose the retaliatory tax provided in (f)(3), are constitutional. *Franklin Life Insurance Co.* v. *State Board of Equalization,* 63 Cal.2d 222.

Sections 685–685.3 of the Insurance Code may be carried out as to an insurer from a state which discriminates against California insurers. The sections are not unconstitutional under Article XIII, Section 14⅘, Subdivision (f) as it read prior to amendment in 1964. *Franklin Life Insurance Co.* v. *State Board of Equalization,* 63 Cal.2d 222; *Atlantic Insurance Co.* v. *State Board of Equalization,* 255 Cal.App.2d 1, appeal dismissed, 390 U.S. 529.

Return premiums.—The term ''return premiums'' refers to that portion of the gross premiums received by an insurance company which has been unearned and which the company is lawfully bound to return. It does not include dividends paid to members of a mutual company. *Northwestern Mutual Life Insurance Co.* v. *Roberts,* 177 Cal. 540.

The cash or surrender values paid upon the cancellation of life policies are not ''return premiums,'' but values paid on the cancellation of pure annuity contracts prior to the starting of payments to the annuitant are by contract ''return premiums'' within the constitutional meaning. *Equitable Life Assur. Society* v. *Johnson*, 53 Cal.App.2d 49.

Dividends.—A mutual life insurance company is not subject to taxation on that portion of a premium which is satisfied by the application of a dividend representing the excess of the previous year's premium over the actual cost of the insurance furnished. *Mutual Benefit Life Insurance Co.* v. *Richardson*, 192 Cal. 369. Cf. *Northwestern Mutual Life Insurance Co.* v. *Roberts*, supra.

Gross premiums.—The term ''gross premiums'' includes the following: assessments (*Bankers Life Co.* v. *Richardson*, 192 Cal. 113; *Western Travelers Accident Assn.* v. *Johnson*, 14 Cal.App.2d 306); the consideration paid for annuity contracts (*Equitable Life Assur. Society* v. *Johnson*, 53 Cal.App.2d 49); the full sums received by bail bond agents from those desiring bail bonds (*Groves* v. *City of Los Angeles*, 40 Cal.2d 751); the entire cost of an employee benefit plan, whether paid from the employer's funds or financed by deductions from the salaries of employees (*Metropolitan Life Insurance Co.* v. *State Board of Equalization*, 32 Cal.3d 649).

Fees which are charged all applicants for membership in a mutual company do not constitute gross premiums within the meaning of this section, since they are not a part of the consideration paid for insurance, when the membership entitles the holder only to apply for insurance and not to receive it and the fees are not returnable if insurance is rejected or the member elects not to apply for it. *State Farm Mutual Automobile Insurance Co.* v. *Carpenter*, 31 Cal.App.2d 178. Interest charged and collected on installment notes executed by insureds for the payment of premiums was no more than income from an investment (loans to insureds) and did not constitute gross premiums, although service charges therefor, amounts calculated to cover the company's increased overhead for handling and collecting the notes, did, *Mercury Casualty Co.* v. *State Board of Equalization*, 141 Cal.App.3d 43.

Amounts retained by an insurance company from wages due its employees participating in a voluntary retirement plan are not insurance premiums under this section where the company has no profit motive in establishing the plan. *California-Western States Life Insurance Co.* v. *State Board of Equalization*, 151 Cal.App.2d 559.

Gross premiums include amounts paid as reimbursement for additional expense incurred in selling insurance on an installment basis such as additional bookkeeping expense and collection expense. *Allstate Insurance Co.* v. *State Board of Equalization*, 169 Cal.App.2d 165.

Deduction of real property taxes.—The provision for the deduction of the amount of taxes paid by an insurance company on real property owned by it in this State does not create an exemption but permits an offset or deduction. The offset or deduction is authorized where the insurance company owned the property at the time of payment of such taxes, although the property was not owned by such company at the time the taxes became a lien. *The Northwestern Mutual Life Insurance Co.* v. *Johnson*, 8 Cal.2d 42.

Flood control levies on real estate owned by an insurance company in this State that are special assessments conferring particular benefits on the land assessed, are not deductible from the gross premiums tax. *Northwestern Mutual Life Insurance Co.* v. *State Board of Equalization*, 73 Cal.App.2d 548.

Doing business.—An insurance association organized in California to take over the business of a Nebraska association was, in accepting in this State the applications of the members of the foreign association to continue their insurance, doing business in this State. Assuming, however, that the contracts of insurance were made in their entirety outside the State, all amounts received on such contracts were subject to the tax, the association having withdrawn from the other State and thereafter conducted its business under its California license, and all payments being sent by mail to its office in California. *Western Travelers Accident Assn.* v. *Johnson*, 14 Cal.App.2d 306.

A foreign insurance company is not subject to tax on premiums remitted directly to its home office by mail after it had actually ceased to do business in California and its certificate of authority had expired. *People* v. *Alliance Life Insurance Co.*, 65 Cal.App.2d 808.

Renewal premiums collected at the Nevada office of a life insurance company which was incorporated in California and has its principal place of business in this State from policyholders residing in states in which the company is not licensed to do business are ''premiums received . . . upon its business done in this State'' within the meaning of this section, where all of the company's services to these policyholders, other than the collection of premiums, are rendered to them at its home office in California. *Occidental Life Insurance Co.* v. *State Board of Equalization*, 139 Cal.App.2d 468.

Retaliatory Tax.—A retaliatory tax on out-of-state insurers doing business in California, when the insurers' states of incorporation imposed higher taxes on California insurers doing business in their states than California would otherwise impose on those states' insurers doing business in California did not violate the commerce clause, since the McCarran-Ferguson Act removes any commerce clause restriction upon a state's power to tax the insurance business, and it did not violate the equal protection clause, since California's promotion of its domestic insurance industry by deterring barriers to interstate business is a legitimate state purpose. *Western And Southern Life Insurance Co.* v. *State Board of Equalization*, 99 Cal.App.3d 410, aff'd 451 U.S. 648.

Other taxes.—A revenue ordinance imposing a tax on a person engaged in the business of soliciting, effecting and negotiating undertakings of bail as agent of an insurance company is invalid under this section, *Groves* v. *City of Los Angeles*, 93 Cal.App.2d 17; *Groves* v. *City of Los Angeles*, 40 Cal.2d 751.

Trust business of title companies.—The levy of a franchise tax on the trust business of a title insurance company for 1943 measured by the income of its trust business in 1942 is not a tax upon its 1942 trust business in violation of the effective date, December 31, 1942, of this section. *Title Insurance and Trust Co.* v. *Franchise Tax Board*, 145 Cal.App.2d 60.

Estoppel.—The State is not estopped to collect from insurance companies taxes for past years (1947 in this case) on the amounts paid to and retained by the companies' agents who solicited and obtained takers of bail bonds where this section levies taxes on the entire amount paid by the applicant to the bail agent, and where all insurance companies, prior to 1951, reported to the Insurance Commissioner as gross premiums only the amount actually received by them from the agents which practice was known by the Commissioner and the Attorney General and no objection was made by the Commissioner and the Attorney General and no objection was made by the Commissioner to any company for failure to report the whole bail bond premiums, there being no clear representation by a responsible agent of government as to what constitutes taxable premiums such as would satisfy an estoppel in connection with tax cases. *United States Fidelity and Guaranty Co.* v. *State Board of Equalization*, 47 Cal.2d 384.

SEC. 29. **Sales and use taxes; apportionment.** (a) The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them that is collected for them by the State. Before the contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election.

(b) Notwithstanding subdivision (a), on and after the operative date of this subdivision, counties, cities and counties, and cities may enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor provisions, that is collected for them by the State, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract.

History.—The amendment of November 3, 1998, added subdivision letter designation (a) to the first paragraph, substituted "that" for "which" after "imposed by them" in the first sentence and substituted "the" for "any such" after "Before" in the second sentence therein and added subdivision (b).

SEC. 30. **Taxes conclusively presumed to have been paid after 30 years.** Every tax shall be conclusively presumed to have been paid after 30 years from the time it became a lien unless the property subject to the lien has been sold in the manner provided by the Legislature for the payment of the tax.

SEC. 31. **Power to tax may not be compromised.** The power to tax may not be surrendered or suspended by grant or contract.

Decisions Under Former Article XIII, Section 6.

Operation.—This section does not serve to qualify a cession to the United States Government of exclusive jurisdiction over areas within the state, so as to reserve to the state the power of taxation within such areas. *Yosemite Park & Curry Co.* v. *Collins*, 20 F.Supp. 1009, reversed on other grounds in 304 U.S. 518.

SEC. 32. **Collection of tax may not be obstructed.** No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.

Construction.—An action by public utility companies seeking mandamus and declaratory relief to compel the Board to adjust the assessment of their real property to its 1975–76 value in accordance with Article XIII A of the Constitution is barred by the provisions of this section. *Pacific Gas & Electric Co.* v. *State Board of Equalization*, 27 Cal.3d 277. This section broadly limits in the first instance the power of the courts to intervene in tax collection matters and applies if the prepayment judicial determination sought would impede tax collection. That an action turns on a challenge to the Board's demands for information does not alone lift the constitutional bar. The Board may compel the disclosure of information if its inquiry is authorized, its requests are specific, and the information sought is reasonably relevant to the inquiry. The role of the court in assessing the propriety of a prepayment challenge to a demand for information is that of examining

the Board's authority to undertake the inquiry. Thus, prepayment relief must be limited to those instances in which it is clear that under no circumstances can the Board prevail and establish its claim, and only then may a suit for injunction be maintained. *Western Oil & Gas Assn.* v. *State Board of Equalization,* 44 Cal.3d 208. A tax assessee is not prohibited by this section from obtaining prepayment judicial relief from an assessor's demand for information if the assessee can show that the information is not reasonably relevant to the proposed tax. Although the constitutional provision prohibits judicial relief from a challenged tax until after its payment, the ban must yield to the requirements of the Constitution of the United States, and the guarantee against unreasonable searches and seizures rooted in the 4th amendment thereof imposes a requirement of reasonable relevance. The fact that there exists a conceivable basis for the tax itself does not preclude prepayment judicial review of a demand for information which is not relevant. *Union Pacific Railroad Co.* v. *State Board of Equalization,* 49 Cal.3d 138.

The Franchise Tax Board cannot be prevented or enjoined from the assessment or collection of any tax. This section means what it says and is, as a part of the fundamental, constitutional law of the state, a constitutional mandate that permits no deviations. Injunctive relief is not available to enjoin the state's collection of a tax, even if the tax statute is unconstitutional and the alleged tax therefore void. *People ex rel. Franchise Tax Board* v. *Superior Court,* 164 Cal.App.3d 526. Statutes governing administrative tax refund procedures, backed as they are by a plenary constitutional authority, are to be strictly enforced. *Farrar* v. *Franchise Tax Board,* 15 Cal.App.4th 10. This section generally bars prepayment review of tax measures, not only by suits for injunctive relief but also by actions for declaratory relief or mandamus. The addition of Revenue and Taxation Code Section 12202.1 as the result of the 1988 enactment of initiative Proposition 103 does not justify an exception to this section. *Calfarm Ins. Co.* v. *Deukmejian,* 48 Cal.3d 805. This section did not bar a class action brought by a city on behalf of all local governments in the state against the state, in which it was alleged that Stats. 1978, Ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Article XIII B of the Constitution. The city was not challenging, directly or indirectly, the validity or application of the unemployment insurance law as such, or the propriety of any ''tax'' assessed thereunder; rather it claimed that all its costs of affording unemployment compensation to its employees were subject to a statutory and constitutional subvention that the state refused to make. *City of Sacramento* v. *State of California,* 50 Cal.3d 51.

A declaratory relief judgment entered in favor of an individual who purchased real property at a trustee's sale, adjudging that the documentary transfer tax must be based upon the purchase price, without regard to the amount of indebtedness attached to the property and assumed by the purchaser, did not improperly prevent or enjoin a tax in violation of this section, which applies to actions against the State, not to those involving assessments by local governments. *Brown* v. *Los Angeles County,* 72 Cal.App.4th 665. A taxpayer did not fail to exhaust his administrative remedies before seeking a declaratory relief judgment ordering the Board to refrain from requiring payment of interest as a precondition to acting upon his claim for refund for taxes which had already been paid in full, since consideration of the validity of the Board's policy did not involve any issue subject to determination through the administrative refund remedy available to him. *Agnew* v. *State Board of Equalization, 21 Cal.4th 310.*

Tax.—This section unambiguously states that an action may be maintained after payment of a tax claimed to be illegal, and it makes no mention of interest on the tax. Accordingly, it deprives a court of jurisdiction only to prevent or enjoin the collection of any tax, and prepayment of interest as well as the tax is not a prerequisite to either an administrative claim for refund or a subsequent legal action for refund of taxes. *Agnew* v. *State Board of Equalization,* 21 Cal. 4th 310; *Chen* v. *Franchise Tax Board,* 75 Cal. App. 4th 1110.

Claims for refund.—This section limits taxpayers' actions to recover taxes to the manner provided by the Legislature. Where claims for refund have not been settled either administratively or judicially, it is appropriate for the State Board of Equalization to retain those funds, pending the outcome of those claims. *Rider* v. *San Diego County,* 11 Cal.App.4th 1410. The power of the State to provide the remedy of an action to recovered alleged overpayments of taxes as the exclusive means of judicial review of tax proceedings is unquestioned. Therefore, where the Legislature has provided an adequate remedy at law for taxpayers seeking refunds of taxes paid, a taxpayer must utilize it within applicable time limitations and is not entitled to a writ of mandate to overturn a Board of Equalization decision against its interests. *Nast* v. *State Board of Equalization,* 46 Cal.App.4th 343.

Mandamus.—Although this section requires payment of a tax before challenging it, it does not require a suit for refund. Rather, it authorizes the Legislature to provide the procedures for challenging a tax, and the Legislature has adopted specific procedures for contesting the Department of Motor Vehicle's fleet registration fees in Vehicle Code Section 8202. As that statute permitted a taxpayer to bring a court action for review of the director's decision, and as its wording was more consistent with administrative mandamus than with an original action for a refund, administrative mandamus was the appropriate procedure for review, provided that the disputed amount had been paid. *American President Lines, Ltd.* v. *Zolin,* 38 Cal.App.4th 910.

Beneficial Interest.—A fire protection district lacked standing to seek a writ of mandate against an assessment appeals board that upheld a lower assessed valuation for a taxpayer's real property, resulting in the district's having to refund previously collected taxes. With respect to the assessed valuation assigned to a particular piece of property, the district did not have any special interest to be served or particular right to be preserved or protected over and above the interest it held in common with the public at large, and thus, it did not meet the beneficial interest requirement for issuance of the writ. *Sacramento County Fire Protection District* v. *Sacramento County Assessment Appeals Board,* 75 Cal.App.4th 327.

Decisions Under Former Article XIII, Section 15.

Construction.—The provision of this section relating to suits to enjoin the collection of taxes and to recover taxes claimed to have been illegally collected does not apply to county assessors in assessing or collecting taxes for county purposes. *Eisley* v. *Mohan,* 31 Cal.2d 637.

Action to recover taxes.—The provision of this section relating to actions to recover taxes claimed to have been illegally collected does not extend the remedy by action at law to cases other than as provided by statute or under the common law. Consequently, it is not violated by Revenue and Taxation Code, Section 4806. *Southern Service Co., Ltd.* v. *Los Angeles County,* 15 Cal.2d 1, 15. See also *Westinghouse Electric & Mfg. Co.* v. *Chambers,* 169 Cal. 131, 139, 140; *Yasunaga* v. *Stockburger,* 43 Cal.App.2d 396, 401.

The provision of this section relating to actions to recover taxes claimed to have been illegally collected is applicable only to taxes levied under this article. It is not violated, accordingly, by Section 10278 of the Revenue and Taxation Code relating to actions for refund of motor vehicle transportation license tax, a tax not levied under this article. *Winters* v. *State Board of Equalization,* 93 Cal.App.2d 87.

The provision of this section allowing recovery of interest is not applicable where, on the basis of the taxpayer's income before renegotiation of its contract with the federal government, the tax was computed properly. *Bermite Powder Co.* v. *Franchise Tax Board,* 38 Cal.2d 700.

SEC. 33. **Legislature to enact necessary revenue laws.** The Legislature shall pass all laws necessary to carry out the provisions of this article.

Decisions Under Former Article XIII, Section 13.

Power of Legislature.—Under this section the Legislature may define ''improvements.'' *Miller* v. *Kern County,* 137 Cal. 516.

The Legislature may fix the mode and means of ascertaining the value of any property to be assessed. *Wells Fargo & Co.* v. *State Board of Equalization,* 56 Cal. 194, and may prescribe the powers and duties of boards of equalization. *Napa Savings Bank* v. *Napa County,* 17 Cal.App. 545.

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ARTICLE XIII A *

TAX LIMITATION

[Sections 1 through 6 added by amendment adopted June 6, 1978.]

SECTION. 1. **Maximum ad valorem tax on real property.** (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

History.—The amendment of June 3, 1986, added "(1)" before "any" and substituted "July 1, 1978, or (2) any bonded indebtedness . . . voting on the proposition" for "the time this section becomes effective" after "prior to" in the first sentence of subdivision (b).

Construction.—As used in Article XIII A, an ad valorem tax is any source of revenue derived from applying a property tax rate to the assessed value of property. *Heckendorn* v. *City of San Marino,* 42 Cal.3d 481. Subdivision (b) excludes from the operation of subdivision (a) taxes levied to pay any indebtedness approved by the voters, not just taxes levied to pay bonded indebtedness. *Shasta County* v. *Trinity County,* 106 Cal.App.3d 30. Real property annexed to a water district after passage of this section is subject to an ad valorem tax in excess of one percent to pay interest and redemption charges on indebtedness of the district approved by the voters prior to that date, despite the fact that the property annexed was not included within the territory served by the district at the time the indebtedness was approved. *Metropolitan Water District* v. *Dorff,* 98 Cal.App.3d 109. An assessment on real property in the area served by a water agency to make up a deficiency incurred by the agency as a result of its purchases and resales of water does not violate the maximum tax limitation where the contract between the agency and the seller, approved by county voters, authorized a tax or assessment sufficient to provide for all payments under the contract. *Kern County Water Agency* v. *Board of Supervisors,* 96 Cal.App.3d 874. Ad valorem real property taxes levied by a local water agency to help fund the agency's payments on its water supply contract with the Department of Water Resources were levied to pay an indebtedness approved by the state's voters before July 1, 1978, and come within the exception to the restriction of subdivision (b). *Goodman* v. *Riverside County,* 140 Cal.App.3d 900. The one percent maximum tax limitation does not apply to special assessments levied pursuant to States & Highway Code, sections 5000 et seq. and 10000 et seq. *Fresno County* v. *Malmstrom,* 94 Cal.App.3d 974. Streets and Highway Code Section 5302.5 does not authorize a county to impose ad valorem property taxes beyond the one percent limitation of subdivision (a) to pay a special assessment imposed on public property. *City of San Marcos* v. *Board of Supervisors,* 159 Cal.App.3d 355.

* Note.—This section constitutes a valid enactment by initiative measure. It is not a constitutional revision; does not violate the single subject requirement; the rollback and two-thirds voting requirement for special local taxes do not violate equal protection and the right to travel is not impaired. *Amador Valley Joint Union High School District, et al.* v. *State Board of Equalization, et al.,* 22 Cal.3d 208; *R. H. Macy & Co.* v. *Contra Costa County,* 226 Cal.App.3d 352. *Nordlinger* v. *Lynch,* 225 Cal.App.3d 1259, *Nordlinger* v. *Hahn,* 505 U.S. 1; *Northwest Financial, Inc.* v. *State Board of Equalization,* 229 Cal.App.3d 198, cert. den. 505 U.S. 1219. Although the drafters of this Article did not intend to adopt a definition that could readily permit its circumvention, it is clear that they did not intend to interfere with benefit-related assessments. Accordingly, this Article does not preclude a public entity from shifting funding for an improvement from its general fund to special assessment, so long as the requisite special benefit exists. *Knox* v. *City of Orland,* 4 Cal.4th 132.

Nonvoted special assessments for local improvements that directly benefit the property assessed do not come within the 1 percent limitation on the taxation of real property. *Solvang Municipal Improvement District* v. *Board of Supervisors,* 112 Cal.App.3d 545. *City Council of the City of San Jose* v. *South,* 146 Cal.App.3d 320. Ad valorem special assessments or special benefit assessments levied by a flood control district, Department of Water Resources, or Reclamation Board must be collected by the county either on an equalized ad valorem roll basis or by levy of a proportionate special benefit assessment, and the adoption of Article XIII A did not alter the county's statutory obligation to do so. *American River Flood Control District* v. *Sayre; The People ex rel. Department of Water Resources* v. *Board of Supervisors,* 136 Cal.App.3d 347.

Levy of ad valorem tax to meet city's obligations to the Public Employee's Retirement System is not subject to the 1 percent limitation on the taxation of real property. The term ''indebtedness'', as traditionally understood, covered the obligations arising under the city's pension plan, and the phrase ''interest and redemption charges'' denotes no more or less than the sums from time to time necessary to avoid default on obligations to pay money, including those for pensions. *Carman* v. *Alvord,* 31 Cal.3d 318. Only ''indebtedness'', the principal sum of bonds, must have been approved by the voters prior to the passage of this section, not ''interest and redemption charges'', and water district could issue bonds after passage of the section at an interest rate greater than that approved by the voters prior to passage of the section. *Metropolitan Water District* v. *Dorff,* 138 Cal.App.3d 388. A city's obligations arising under pension systems constitute an ''indebtedness'' and the sums paid by the city to avoid default thereon constitute the payment of ''interest and redemption charges'', and once indebtedness is found to have had the voters' prior approval, taxes levied to pay the obligations arising thereunder are exempt from the limitation and need not also be approved by the voters. *Valentine* v. *City of Oakland,* 148 Cal.App.3d 139. A 1983 ordinance imposing a property tax to meet city's obligations to its retirement system is not subject to the one percent limitation on the taxation of real property where city charter approved by the voters in 1957 provided for retirement benefits being mandated at the level then existing by ordinance and the proceeds from the tax were to be used to fund the level of benefits in existence in 1957. *City of Fresno* v. *Superior Court,* 156 Cal.App.3d 1137. A city charter provision, adopted in 1937, requiring the city to provide for a tax of 7 cents on each $100 of assessed valuation for the support of the city's libraries, created an ''indebtedness'' exempt from the limitation. An ''indebtedness'' may be created by statute rather than by contract, and the critical consideration in determining whether a city has created an ''indebtedness'' is whether its voters obligated themselves prior to 1978 to make expenditures in the future for a specified purpose. *Patton* v. *City of Alameda,* 40 Cal.3d 41.

City was entitled to receive a proportionate share of delinquent penalties by virtue of its right to share in property taxes collected by County, as provided for in subdivision (a). In the absence of legislative directive providing otherwise, the delinquent penalties followed the taxes. *City of Los Angeles* v. *Los Angeles County,* 139 Cal.App.3d 999.

Pension plan contributions made by city to PERS through the imposition of additional property taxes are an obligation constituting an indebtedness approved by the voters within the meaning of Article XIII A, such indebtedness is not limited to an indebtedness that was fixed and certain at the time of voter approval since changes in contributions were envisaged and approved by the voters, and Article XIII A does not prohibit levy and collection of such taxes. *City of Watsonville* v. *Merrill,* 137 Cal.App.3d 185. A water district which had authorized, in 1964, $3.2 million in bonds pursuant to former Water Code Section 71931, but which had issued only $1.7 million of the bonds prior to the passage of this section, had the authority to issue the remaining $1.5 million of the bonds. Pursuant to former Section 71931, the bonds were ''approved'' by district landowners by means of their failure to register disapproval against their issuance, and although the landowners were not necessarily residents of the district, they were, as holders of title, ''voters'' for purposes of incurring the bonded indebtedness, pursuant to present Section 71931. Thus, the unissued bonds come within the exception to the restriction of subdivision (b). *Las Virgenes Municipal Water District* v. *Dorgelo,* 154 Cal.App.3d 481. As used in subdivision (b), ''indebtedness'' refers to an actual debt of an amount certain for money already received, such as upon the sale of construction or improvement bonds, and to be repaid in periodic payments in installments upon principal and interest with the intent and purpose of redeeming the original debt, and successful school district tax override measures that antedated Article XIII A do not constitute the kind of ''indebtedness'' provided for therein so as to allow school districts with existing override tax rates to continue to collect taxes beyond the limits imposed by Article XIIIA. *Arvin Union School District* v. *Ross,* 176 Cal.App.3d 189.

1978–79 Secured Roll.—The Tax Injunction Act, 28 U.S.C. § 1341, barred federal court consideration of plaintiff's action challenging the constitutionality of Article XIII A and seeking refund of property taxes. *Marvin F. Poer and Co.* v. *Alameda County,* 725 F.2d 1234.

1978–79 Unsecured Roll.—Sections 1(a) and 2(a) were not applicable to property taxed on the unsecured portion of the assessment roll for the tax year 1978–79. Taxes on unsecured property, both real and personal, were to be assessed at the prior year's rate for the secured roll as provided by Article XIII, Section 12 of the Constitution. *Board of Supervisors* v. *Lonergan,* 27 Cal.3d 855; *R. E. Hanson, Jr. Mfg.* v. *Los Angeles County,* 27 Cal.3d 870. The application of this article to the unsecured tax rolls can be determined in refund actions by individual taxpayers pursuant to Revenue and Taxation Code Section 5140, and plaintiffs were not entitled to preliminary injunctive relief enjoining county officials from spending funds allegedly collected in violation of the one percent limitation on the taxation of real property established by this section. *Daar* v. *Alvord,* 101 Cal.App.3d 480.

Apportionment.—This article expressly authorizes the Legislature to apportion property tax revenues. *San Miguel Consolidated Fire Protection District* v. *Davis,* 25 Cal.App.4th 134.

Newly Constructed Property.—The supplemental assessment provisions of Revenue and Taxation Code Section 75.12, which delay the supplemental assessment of newly constructed property held for sale until it changes ownership or is rented, leased, or otherwise used by the owner, do not violate this section. *Shafer* v. *State Board of Equalization,* 174 Cal.App.3d 423.

Payment of Money Judgments.—The initiative limitations on taxing and spending contained in Article XIII A, Article XIII B, and Article XIII C do not preclude judicial enforcement by writ of mandate of a judgment imposing inverse condemnation liability, an obligation imposed by statutory law. Payment of such a judgment does not implement a municipal "purpose" within the meaning of the Articles' provisions; rather, such payment acts solely to vindicate the constitutional rights of the landowner. *F & L Farm Co.* v. *City Council of the City of Lindsay,* 65 Cal.App.4th 1345. This article prohibits a county from levying property taxes in excess of 1 percent to pay a money judgment under Harbors and Navigation Code Section 6361 and Government Code Sections 970 through 971. Although Section 6361 authorizes a board of supervisors to levy a special tax sufficient to meet a port district's annual estimate of the amount of money it will need "for all purposes," that statute has been superseded by the statutes implementing Proposition 13 insofar as they are inconsistent. Formulae for the distribution of tax funds to local agencies and districts have been enacted by the Legislature (Rev. & Tax. Code, Sec. 93 et seq.), and a district can no longer expect a county to levy taxes to raise whatever sum the district budget calls for. (Disapproving *F & L Farm Co.* v. *City Council,* 65 Cal.App.4th 1345 to the extent it holds to the contrary.) *Ventura Group Ventures, Inc.* v. *Ventura Port District,* 24 Cal.4th 1089.

Non-ad valorem general property tax.—A "parcel tax" consisting of an annual flat fee assessed against property holdings in a city, which tax was designed to raise revenue for deposit in the city's general fund for municipal services, is a non-ad valorem general property tax and invalid under this section where it fell due annually at fixed times and it was not apportioned by the type and extent of municipal services used. *City of Oakland* v. *Digre,* 205 Cal.App.3d 99.

SEC. 2. **Valuation of real property.** (a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975–76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" does not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, ''local affected agency'' means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term ''newly constructed'' does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of single- or multiple-family dwelling that is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, that are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements that qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(d) For purposes of this section, the term, ''change in ownership'' does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public

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entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property that occur after the provisions of this subdivision take effect.

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985–86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, ‘‘affected local agency’’ means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. This paragraph shall apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster, as declared by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms ''purchased'' and ''change in ownership'' do not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) (1) For purposes of subdivision (a), the terms ''purchased'' and ''change in ownership'' do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first one million dollars ($1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value

of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar ($1,000,000) full cash value limit specified in paragraph (1).

(i) (1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term ''new construction'' does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, ''qualified contaminated property'' means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is ''uninhabitable'' if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation,

and nonresidential real property is ''unusable'' if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, on or after the effective date of the amendment.

History.—The amendment of November 7, 1978, corrected to lower case the words ''county assessor's'' and corrected the spelling of ''occurred'' in the first sentence, substituted ''full cash value'' for ''tax levels'' in the second sentence, and added the third sentence to subdivision (a); and substituted ''full cash'' for ''fair market'', substituted ''2 percent'' for ''two percent (2%)'', and added the balance of the first sentence of subdivision (b) after ''Jurisdiction''. The amendment of November 4, 1980, added subdivision (c). The amendment of June 8, 1982, added subdivision (d). The amendment of June 5, 1984, added the fourth sentence to subdivision (a). The amendment of November 6, 1984, added ''both of'' after ''include''; added ''following:'' after ''the'' in the first sentence of subdivision (c), added ''(1) The'' before ''construction'' in the former first sentence, and added subsection (2) thereto. The amendment of June 3, 1986, added subdivisions (e)

and (f). The amendments of November 4, 1986, deleted "the term" after "section,", substituted "does" for "shall" after "newly constructed" and substituted "the" for "such" after "value of" in the third sentence of subdivision (a); added the second paragraph to subdivision (a); and added subdivisions (g), (h), and (i). The amendment of November 8, 1988 deleted "not" after "shall" substituted "on or after November 5, 1986" for "prior to the effective date of this paragraph" in the fifth sentence of the second paragraph, and added the third paragraph of subdivision (a); added "adopted prior to November 1, 1988," after "section" and substituted "changes in ownership" for "change in ownerships" after "effective for" in the first sentence, and added the second sentence of subdivision (i). The amendment of June 5, 1990, added the fourth paragraph of subdivision (a), substituted "any" for "both" in subdivision (c), and added subsection (3) to subdivision (c). The amendment of November 6, 1990, added subsection (4) to subdivision (c). The amendment of November 2, 1993, added (1) before "Notwithstanding" in the first paragraph, added (2) and "Except as provided in paragraph (3)" before "This" in the second paragraph, and added paragraph (3) to subdivision (e). The amendment of June 7, 1994, added paragraph (5) to subdivision (c). The amendment of March 26, 1996, added "(1)" before "For purposes of", substituted "change in ownership" for "change of ownership" after "purchased," and added paragraph (2) to subdivision (h). The amendment of November 3, 1998, substituted "that" for "which" throughout text; added quotation marks to the phrase "full cash value" in the first sentence of subdivision (a); substituted "single- or multiple-family" for "single or multiple family" after "component of a" in the first sentence of paragraph (3) of subdivision (c); substituted "one million dollars ($1,000,000)" for "$1,000,000" after "the first" in the first sentence of paragraph (1) of subdivision (h); relettered former subdivision (i) as subdivision (j) and added the second sentence therein; and added subdivision (i).

Construction.—The 1978 amendment, which amended this section by specifically providing that acquisition value will be reduced to reflect a decline in real property value, applies retroactively to the 1978–79 fiscal year. *State Board of Equalization* v. *Board of Supervisors*, 105 Cal.App.3d 813. Revenue and Taxation Code Sections 110.1(f) and 51 and Cal. Admin. Code Title 18, Section 460, which interpreted the inflation factor provisions of Section 2(b), requiring adjustment of 1975–76 base values for the three tax years between establishment of the full cash value base in 1975 and the 1978 effective date of Article XIII A, were not opposed to the constitutional provisions, which were ambiguous as to when application of the inflation factor was to commence, and represented a valid exercise of legislative power. *Armstrong* v. *San Mateo County,* 146 Cal.App.3d 597. ''The appraised value of real property when purchased'', as used in Section 2(a), constitutes a change in the time at which property purchased after March 1, 1975, is to be appraised and assigned a value. Thus, an appraisal of property purchased is to be made as of the date purchased, and for properties sold after March 1, 1975, which had only lien date values between 1975 and 1979, the assessor properly went back and calculated the values of such properties as of the dates purchased without regard to such lien date values. *Schoderbek* v. *Carlson,* 152 Cal.App.3d 1027. Article XIII A applies to oil and gas properties and interests, and Cal. Admin. Code Title 18, Section 468, establishing valuation principles for taxation of oil and gas reserves, was a proper interpretation of Article XIII A as applied to oil and gas properties, which have no real parallel with other types of property. Section 468 correctly treats additions to proved reserves due to changed physical or economic conditions as additions to real property interests, provides that existing proved reserves may not be increased in value more than 2 percent per year, and recognizes reductions in value of existing proved reserves due to depletion from production. *Lynch* v. *State Board of Equalization,* 164 Cal.App.3d 94. Article XIII A applies to geothermal properties and interests, and Cal. Admin. Code Title 18, Section 468, establishing valuation principles for taxation of oil and gas reserves, was a proper interpretation of Article XIII A as applied to geothermal properties, which have no real parallel with other types of property. *Phillips Petroleum Co.* v. *Lake County,* 15 Cal.App.4th 180. Corporation whose purchase of residence resulted in the reassessment of the real property at fair market value, an amount four times greater than the assessed values of comparable homes of long-time resident neighbors, had no constitutional basis for challenging the reassessment. *Northwest Financial, Inc.* v. *State Board of Equalization,* 229 Cal.App.3d 198. The supplemental assessment provisions of Revenue and Taxation Code Section 75.18, which implement Section 2(b), do not constitute an ad valorem tax increase. *Shafer* v. *State Board of Equalization,* 174 Cal.App.3d 423.

For purposes of Section 2(h), a change in ownership of real property that is passed from parent to child as inheritance under a will does not occur on the date of death, but results from a judicial decree or order of distribution after probate of the estate, since it is only then that the devisee attains the right of sole possession and beneficial use in addition to bare legal title. *Larson* v. *Duca,* 213 Cal.App.3d 324. This section and Section 1(a) apply only to locally assessed property, not to the unit taxation of public utility property. Unit taxation is properly characterized not as a taxation of real property or personal property or a combination thereof, but rather as the taxation of a going concern, wherein Article XIII A applies only to real property taxes. *ITT World Communications, Inc.* v. *City and County of San Francisco,* 37 Cal.3d 859.

Change in ownership.—The Legislature did not unlawfully abridge the California Constitution by undertaking to define in Revenue and Taxation Code section 64(c) the phrase ''change in ownership'', as used in this section, for purposes of permitting reassessment of realty, and its definition of it was presumptively correct. *Sav-on Drugs, Inc.* v. *Orange County,* 190 Cal.App.3d 1611. The imposition of a property tax on the possessory interests of commercial air carriers in their use of facilities at an international airport did not violate the intent of Article XIII A by discriminating against lessors and lessees of government property, as compared to lessors and lessees of private property. The Revenue and Taxation Code distinguishes between tax-exempt government property, where a change of ownership allowing reassessment occurs regardless of the term of the taxable possessory interest, and taxable private property, where a change of ownership occurs only if the term of the lease is for 35 years or more. The term of the carriers' alleged taxable possessory interest had been determined by the county to be five years. The Legislature could reasonably determine that an owner who leases his private real property has not transferred ownership for tax purposes, unless the lease is for a substantial length of time. By contrast, when the government gives a taxable possessory interest in land, it can reasonably be viewed as always transferring the equivalent of a fee interest, even if the interest is for a short term, since before the transfer there was no taxable possessory interest at all. *United Air Lines, Inc.* v. *San Diego County,* 1 Cal.App.4th 418. Department store owner, which underwent a corporate restructuring that constituted a change in ownership under this section and caused the reassessment of its real property at fair market value (and at an amount 2.5 times higher than that of competing stores in

the same mall), had no bases for challenging the reassessment on equal protection or other constitutional grounds. *R. H. Macy & Co.* v. *Contra Costa County,* 226 Cal.App.3d 352. Homeowner whose purchase of residence resulted in the reassessment of her real property at fair market value, an amount in excess of the assessed values of comparable homes of long-time resident neighbors, had no constitutional basis for challenging the reassessment. Under this Article, each owner's assessment is based on acquisition value, in compliance with the equal protection clause's prohibition against property owners who are similarly situated in the same class and irrespective of an owner's status as a resident or of an owner's length of residence. And amendments to this section providing that base-year values may be transferred to certain replacement properties, and that certain transfers of property are deemed not to be changes of ownership do not deprive this Article of its rational basis. *Nordlinger* v. *Lynch,* 225 Cal.App.3d 1259.

Sale and leaseback.—The sale of a building pursuant to a sale and leaseback arrangement was a change in ownership within the meaning of Section 2(a), triggering reassessment of the property. The sale met the three-prong definition of change in ownership in Revenue and Taxation Code Section 60. And the leaseback for a term of 50 years (including renewal options) of a building pursuant to a sale and leaseback arrangement was a change in ownership, triggering reassessment of the property. The leasehold interest created met the definition of change in ownership in Revenue and Taxation Code Section 61(c). *Industrial Indemnity Co.* v. *City and County of San Francisco,* 218 Cal.App.3d 999.

Assessment on Termination of Williamson Act Contract.—Agricultural property subjects to such a contract which was terminated in 1977 was properly assessed in 1978 to reflect fair market value under the ''roll-back'' provisions of Section 2(a). While a literal application of the language of Section 2(a) would require use of the ''full cash'' value figure reflected on the 1975–76 secured tax-roll, such would violate the essence of Article XIII, Section 8, which was not repealed by Article XIII A. *Shellenberger* v. *Board of Equalization of San Joaquin County,* 147 Cal.App.3d 510.

Assessment of Golf Courses.—No conflict exists between this Section and Article XIII, Section 10 of the Constitution, which establishes an exception to the general rule of assessment valuation on the basis of highest and best use to which property might be put where property is used as a nonprofit golf course. Thus, the value of plaintiffs' properties are their respective 1975–76 ''golf course'' values subject to the 2 percent per year increases authorized by subdivision (b). *Los Angeles Country Club* v. *Pope,* 175 Cal.App.3d 278.

Assessment of lands owned by local governments and located outside their boundaries.—Both this section and Article XIII, Section 11 of the Constitution may be applied to taxable lands owned by local governments and located outside their boundaries without any conflict. Article XIII, Section 11 only sets an upper limit on the valuation for tax purposes of property owned by local governments, and this section only sets an upper limit on the valuation and taxation of real property. If the full cash value of lands under this section were lower than either of the two alternative valuation limitations of Article XIII, Section 11, using this section valuation would not conflict with Article XIII, Section 11, as the lower of the two alternative valuation limitations would not be exceeded. If one or both of the alternative valuation limitations were lower than the valuation under this section, it would not conflict with that provision to use the lower valuation under Article XIII, Section 11, because the valuation limitation of this section is only a ceiling. *San Francisco* v. *San Mateo County*, 10 Cal.4th 554.

Corporation.—A corporation's sale of an office complex, subject to its executing three 50-year leases and assigning them to its wholly-owned subsidiary prior to sale, was a single transaction resulting in a 100 percent change in ownership. Under the end result test, the interdependence test, and the binding commitment test, the sale and leases were really component parts of a single transaction, the intent being for the buyer to acquire the property subject to the long-term leases, and the step transaction doctrine applied. *Crow Winthrop Operating Partnership* v. *Orange County,* 10 Cal.App.4th 1848.

Assessment of gas storage rights upon discovery.—Gas storage rights in certain real parcels were properly valued and assessed in 1978, when they were discovered, since that was the year in which they attained value due to the confluence of certain economic and technological factors. Because the rights were undiscovered, and consequently had no value, prior to 1978, they were not included in the 1975 base year valuation provided by Article XIII A. *Tenneco West, Inc.* v. *Kern County,* 194 Cal.App.3d 596.

Escape assessments.—As the result of this Article, the base year value of property is made a cornerstone of taxation, and this valuation cannot be revised or altered under the guise of escape assessments. Thus, ''assessment year'' in the statutory provision relating to escape assessments must be construed as the year when the base value of the property was determined, in which case the four-year statute of limitations applicable to the making of escape assessments runs from the base year rather than from a subsequent assessment year. *Dreyer's Grand Ice Cream, Inc.* v. *Alameda County,* 178 Cal.App.3d 1174. Revenue and Taxation Code Section 532, which provides the statute of limitations for levying escape assessments, does not conflict with this Article. Under that section, escape assessments must be made within four years of July 1 of the assessment year, as defined in Revenue and Taxation Code Section 118, in which property escaped taxation or was underassessed. This Article did not change the definition of ''assessment year.'' An escape assessment is merely a mechanism for implementing existing property tax law and cannot be in conflict with it. *Blackwell Homes* v. *Santa Clara County,* 226 Cal.App.3d 1009.

Partnership.—Transfer of title to real property owned by a partnership by the successor corporation of one of the general partner corporations, which held title to the property as nominee for the partnership, to the partnership did not constitute a change in ownership under subdivision (a) since a change in ownership does not occur upon transfer of ''bare legal title'' to property, without a corresponding transfer of ''the beneficial use thereof'', and since the nominee corporation and later the successor corporation held no more than ''bare legal title'' to the property for the use and benefit of the partnership. *Parkmerced Co.* v. *City and County of San Francisco,* 149 Cal.App.3d 1091. A partnership's sale of an office complex in three steps, with one partner selling its partnership interest to the buyer, the buyer and the other partner liquidating the partnership and taking equal interests in the property, and the other partner then selling its property

interest to the buyer, was a single transaction that resulted in a 100 percent change in ownership. Under the end result test, the interdependence test, and the binding commitment test, the three steps were really component parts of a single transaction, the ultimate intent being for the buyer to acquire all of the property, and the step transaction doctrine applied. *Shuwa Investments Corporation* v. *Los Angeles County,* 1 Cal.App.4th 1635.

Trust.—Termination of an irrevocable trust on real property and transfer of the property to the beneficiaries in 1978 does not constitute a change in ownership under subdivision (a). *Allen* v. *Sutter County Board of Equalization,* 139 Cal.App.3d 887.

SEC. 3. **Changes in state taxes.** From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

Construction.—As used in Article XIII A, an ad valorem tax is any source of revenue derived from applying a property tax rate to the assessed value of property. *Heckendorn* v. *City of San Marino,* 42 Cal.3d 481. The supplemental assessment provisions of Revenue and Taxation Code Sections 75.10 and 75.11 only affect the time at which existing real property taxes are calculated and imposed and thus, they do not impose new ad valorem taxes in violation of this section. *Shafer* v. *State Board of Equalization,* 174 Cal.App.3d 423.

SEC. 4. **Imposition of special taxes.** Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Construction.—This section is not self-executing but requires enabling legislation. *California Building Industry Ass'n.* v. *Governing Board of the Newhall School District,* 206 Cal.App.3d 212. An ad valorem tax levied to meet a city's pension obligation, not subject to the 1 percent limitation of Section 1(b), cannot be construed to fall within this section. *Carman* v. *Alvord,* 31 Cal.3d 318. A proposed city initiative ordinance defining "special tax" was invalid since "special tax" had already been defined by judicial decision and by statute and was also invalid as an unlawful attempt to impair essential governmental functions through interference with administration of the city's fiscal powers. *City of Atascadero* v. *Daly,* 135 Cal.App.3d 466. A county sales tax measure is a general tax as a matter of law and hence, not subject to the voter approval requirements applicable to special taxes under this section. *Coleman* v. *Santa Clara County,* 64 Cal.App.4th 662. A redevelopment agency is not a special "district" within the meaning of this section since it does not have the power to levy (impose and collect) taxes. Thus, a sales and use tax ordinance adopted by a redevelopment agency did not violate the section. *Huntington Park Redevelopment Agency* v. *Martin,* 38 Cal.3d 100. The supplemental assessment provisions of Revenue and Taxation Code Sections 75.10 and 75.11 only affect the time at which existing real property taxes are calculated and imposed and thus, they do not impose new ad valorem taxes in violation of this section. *Shafer* v. *State Board of Equalization,* 174 Cal.App.3d 423. This section was intended to assure effective property tax relief by restricting the taxing power of local governments. This is so because any tax savings resulting from Article XIII A could be withdrawn or depleted by additional or increased state or local levies of taxes other than property taxes. *Rider* v. *San Diego County,* 1 Cal.4th 1.

Effective date.—An ordinance imposing a transfer tax which became operative on June 29, 1978, was not affected by this section which became effective on July 1, 1978, and thus, was not invalid under the provisions thereof. *Pugh* v. *City of Sacramento,* 119 Cal.App.3d 485; *Northgate Partnership* v. *City of Sacramento,* 155 Cal.App.3d 65. An ordinance increasing business license taxes enacted on June 29, 1978, and which became effective immediately was not affected by this section which became effective on July 1, 1978. *National Independent Business Alliance* v. *City of Beverly Hills,* 128 Cal.App.3d 13.

Special District.—A "special district" includes any local taxing agency created to raise funds for city or county purposes to replace revenues lost because of real property tax restrictions of this Article, even if the agency lacks power to impose property taxes. Thus, a county agency formed to impose a sales tax to finance the construction of county justice facilities, upon the approval of a tax ordinance by a majority of county voters, was a special district within the meaning of this section. *Rider* v. S*an Diego County,* 1 Cal.4th 1. A special district includes any local taxing agency created to raise funds for city or county purposes to replace revenues lost by the restrictions of Article XIII A. However, it is not necessary that the agency be controlled by the city or county; it need only be controlled by an entity subject to the super-majority requirement of Article XIII A. Thus, the San Francisco Educational Financing Authority, controlled by the city and county unified school district and the community college district, is a special district within the meaning of this section. *Hoogasian Flowers, Inc.* v. *State Board of Equalization,* 23 Cal.App.4th 1264. A special library district (Ed. Code § 19600) empowered to levy taxes on property was a "special district" within the meaning of this section and thus subject to the two-thirds' vote requirement thereof, which was not subject to a close scrutiny equal protection analysis. *Altadena*

Library District v. *Bloodgood,* 192 Cal.App.3d 585. A county repair and projects authority, controlled by the county and created to impose a tax that circumvented this Article, is a ''special district'', even if it lacks power to levy property taxes. An intent to circumvent may be inferred whenever a new tax agency is essentially controlled by one or more cities or counties that otherwise would have had to comply with the super-majority provisions of this section. *Monterey Peninsula Taxpayers Association* v. *Monterey County,* 8 Cal.App.4th 1520. A ''special district'' includes any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of this Article. Thus, under the Orange County Regional Justice Facilities Act and the County Regional Justice Facilities Financing Act, which provide for the adoption and implementation of local sales tax ordinances to fund detention and courthouse facilities upon approval by the voters in specified counties, ordinances not approved by two-thirds of the county's voters are invalid. *Howard Jarvis Taxpayers' Assn.* v. *State Board of Equalization,* 20 Cal.App.4th 1598.

A municipal utility district formed prior to the adoption of Article XIII A and not empowered to levy real property taxes is not a special district as defined in Government Code Section 50075 et.seq. *Brydon* v. *East Bay Municipal Utility District,* 24 Cal.App.4th 178.

Special Taxes.—The term ''special taxes'' means taxes which are levied for a specific purpose. Thus, a payroll and gross receipts tax, the proceeds of which were placed in the city's general fund for use for general governmental expenditures, is not a ''special tax''. *City and County of San Francisco* v. *Farrell,* 32 Cal.3d 47. A special tax is a tax levied for a specific purpose, rather than a levy placed in the general fund to be utilized for general governmental purposes. Thus, a fee imposed upon a developer for the construction of water facilities necessitated by the development of a condominium complex, which fee was not levied for general revenue purposes, was not a special tax. *Carlsbad Municipal Water District* v. *QLC Corporation,* 2 Cal.App.4th 479. A special tax is a tax levied to fund a specific governmental project or program, even though, under this definition, every tax levied by a special purpose district or agency would be deemed a special tax. Although *City and County of San Francisco* v. *Farrell,* 32 Cal.3d 47, held that the proceeds of a tax placed in a city's treasury for general governmental purposes was not a special tax, that case does not apply to limited purpose agencies. *Rider* v. *San Diego County,* 1 Cal.4th 1. A sales tax levied by a county repair and improvement authority was a special tax, even though the tax was intended to fund 27 different projects rather than a specific project. A single tax with specific amounts earmarked for specific projects is different from revenues deposited in the general fund, and the fact that 27 specific taxes are combined in one does not convert the tax into a general tax for general government purposes. *Monterey Peninsula Taxpayers Association* v. *Monterey County,* 8 Cal.App.4th 1520.

A ''parcel tax'', the proceeds of which were to go into the city's general fund for the enhancement and maintenance of municipal services, is not a ''special tax''. *City of Oakland* v. *Digre,* 205 Cal.App.3d 99. A utilities tax, the proceeds of which were placed in the city's general fund for use for general governmental expenditures, including police and fire protection, is not a ''special tax''. *Fenton* v. *City of Delano,* 162 Cal.App.3d 400. A city's tax ordinance providing that the proceeds of the tax were to be paid to the city's general fund to be ''used for any and all municipal purposes'' was not a special tax, even though most of the proceeds derived from the tax were used for street repairs. *Neecke* v. *City of Mill Valley,* 39 Cal.App.4th 946. A facilities fee for connecting an apartment complex to a water system was a ''special tax'' under this section, requiring a two-thirds vote of the electorate of the district for its enactment. Although the fee, if reasonably related to the cost of the service for which it was imposed, would fall within the scope of the ''service'' fee defined by Government Code Section 50076, and would thus be outside the definition of ''special tax'', the district failed to sustain its burden of proving that its fee did not exceed the reasonable cost of providing the service for which it was imposed. *Beaumont Investors* v. *Beaumont-Cherry Valley Water District,* 165 Cal.App.3d 227. City's fire hydrant fee ordinances which did not contain language limiting the use of the fees and the fund established by the ordinances solely to those installations and repairs necessitated by new development, as mandated by this section, were constitutionally invalid. *Bixel Associates* v. *City of Los Angeles,* 216 Cal.App.3d 1208.

A local school district's levy imposing a ''special tax'' on all new residential construction in the district to fund new school construction was preempted by the later enacted Government Code Section 65995, part of a larger legislative program for school construction financing. The intent was to make uniform statewide the process of school construction financing and to empower school districts to impose development charges, and allowing the district to collect special taxes to offset development costs in addition to collecting the maximum amount allowed under the statute would upset that intent. Also, a ''special tax'' is a ''charge'' that Section 65995 specifically prohibited. *Grupe Development Co.* v. *Superior Court of San Bernardino County,* 4 Cal.4th 911.

As used in Article XIII A, an ad valorem tax is any source of revenue derived from applying a property tax rate to the assessed value of property. Thus, an ordinance imposing a graduated tax based on the city's zoning and classifications, determined by real property parcel size, was not an ad valorem tax and did not violate Article XIII A but was in accordance with the scheme established in Government Code Section 53978, governing special taxes. *Heckendorn* v. *City of San Marino,* 42 Cal.3d 481. ''Special tax'' as used in this section does not embrace fees charged in connection with regulatory activities when the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purposes. *Pennell* v. *City of San Jose,* 42 Cal.3d 365.

Special Assessments.—Special assessments charged for improvements to individual properties which do not exceed the benefits the assessed properties receive from the improvements are not special taxes within the meaning of this section. *Fresno County* v. *Malmstrom,* 94 Cal.App.3d 974. Special assessments levied for maintaining landscaped median islands on public streets within maintenance district are not special taxes. *City Council of the City of San Jose* v. *South,* 146 Cal.App.3d 320. Special assessments levied to finance maintenance for existing parks are not special taxes within the meaning of this section. Public parks confer a special benefit upon property and thus, parks are legitimate subjects for special assessments. *Knox* v. *City of Orland,* 4 Cal.4th 132. A special assessment to finance local improvements is not a general or special tax, but the property assessed must receive a special benefit from the improvement funded by the assessment. *City of Larkspur* v. *Marin County Flood Control etc. District,* 168 Cal.App.3d 947.

A city ordinance enacted by a charter city that imposed a present lien on undeveloped property to pay in the future an apportioned share of the costs of public facilities required to accommodate the needs of future residents of the property upon development was a special assessment. The ordinance as applied was a valid exercise of the city's power to require undeveloped land to bear the costs of the public facilities necessary for the health and welfare of its future residents. *J. W. Jones Companies* v. *City of San Diego,* 157 Cal.App.3d 745. Facilities benefit assessments used to finance public facilities in a new development, including construction of a water line, parks, library, and fire station, conferred a direct benefit on the development properties and were thus special assessments. *City of San Diego* v. *Holodnak,* 157 Cal.App.3d 759. County landfill fees imposed by a county to fund landfill improvements pursuant to Health and Safety Code Section 5471 are special assessments. *Kern County Farm Bureau* v. *Kern County,* 19 Cal.App.4th 1416.

A sewer capacity fee imposed by a water district to fund capital improvements is a special assessment from which other public entities are exempt (unless there is contrary legislative authority). A state agency such as a school district is responsible for paying a special assessment such as the capacity fee only when the Legislature authorizes such payment. *San Marcos Water District* v. *San Marcos Unified School District,* 42 Cal.3d 154.

Assessments.—Provisions of Streets and Highway Code Section 36500 et seq., and an ordinance authorizing imposition of assessments on businesses for the purposes of general downtown promotions, the furnishing of music, and other expenditures unrelated to capital improvements, did not constitute a special tax under this section, which does not apply to certain revenue-generating procedures employed by local governments or to special assessments. Although the downtown promotion charge was not a true special assessment, that did not necessarily mean it was a special tax. The city and Legislature determined that downtown promotion inures to the benefit of business and landlords within the improvement district because the funds are used to make the downtown area a safer, cleaner, and more economically viable area. Under these circumstances, in which the business license holder who pays the assessment is specially benefitted, the assessment is not a ''special tax.'' *Evans* v. *City of San Jose,* 3 Cal.App.4th 728.

Fees.—Fees for county services in processing subdivision, zoning, and other land use applications are not special taxes within the meaning of this section where they do not exceed the reasonable cost of providing services necessary to the regulatory activities for which they are charged and are not levied for unrelated revenue purposes. *Mills* v. *Trinity County,* 108 Cal.App.3d 656; *California Building Industry Ass'n.* v. *Governing Board of the Newhall School District,* 206 Cal.App.3d 212; *Carlsbad Municipal Water District* v. *QLC Corporation,* 2 Cal.App.4th 479. A mitigation fee payable by a developer as a condition of a city's approval of land-use changes allowing building is not a special tax within the meaning of this section. *Ehrlich* v. *City of Culver City,* 15 Cal.App.4th 1737. A water rate structure enacted as part of a drought management program is not a special tax within the meaning of this section. *Brydon* v. *East Bay Municipal Utility District,* 24 Cal.App.4th 178. Fees charged for the costs of regulatory activities are not special taxes under an Article XIIIA, Section 4 analysis if they do not exceed the reasonable cost of providing services necessary to the activities for which they are charged and they are not levied for unrelated revenue purposes. *California Association of Professional Scientists* v. *Department of Fish & Game, 79 Cal.App.4th 935.*

Fees for (or dedication of land to) local school districts to relieve the overcrowding of local school facilities required as a condition of being granted building permits do not violate this section in that they are neither ad valorem taxes on real property nor special taxes within the meaning of the section. *Trent Meredith, Inc.* v. *City of Oxnard,* 114 Cal.App.3d 317. Exactions imposed by school districts on developers of new residential housing within the districts, which exactions were proposed to and approved by voters purportedly under the authority of this section, were development fees, not special taxes. While under Government Code Section 50076 a development fee may be treated as a special tax, such will occur only if the fee exceeds the reasonable cost of providing the service for which it is charged and/or if the fee is levied for general revenue purposes, and neither circumstance existed. Being development fees, the fees were preempted by state law because they conflicted with Government Code Sections 53080 and 65995 by taking an amount in excess of the maximum provided for therein. *California Building Industry Ass'n.* v. *Governing Board of the Newhall School District,* 206 Cal.App.3d 212. A Fee imposed upon a developer for the construction of water facilities necessitated by the development of a condominium complex, which fee did not exceed the reasonable cost of providing the services, was not levied for general revenue purposes and thus, was not a special tax. *Carlsbad Municipal Water District* v. *QLC Corporation,* 2 Cal.App.4th 479. A surcharge on materials deposited in county landfills is not a special tax within the meaning of this section where it does not exceed the reasonably necessary cost of the program it funds and the charges allocated bear a fair or reasonable relationship to the payor's burdens on or benefits from the activity at issue. *City of Dublin* v. *Alameda County,* 14 Cal.App.4th 264.

Transit fees imposed on developers of new office buildings as a condition of issuance of certificates of completion and occupancy are not special taxes within the meaning of this section where they are directly related and limited to the cost of increased municipal transportation services engendered by the particular developments. *Russ Building Partnership* v. *San Francisco,* 199 Cal.App.3d 1496; *Pacific Gateway Assoc. Joint Venture* v. *San Francisco,* 199 Cal.App.3d 1496; *Crocker National Bank* v. *San Francisco,* 199 Cal.App.3d 1496. Fees, based on gross receipts, for operation of rental car agencies located off airport premises but serving passengers of county airport are not special taxes within the meaning of this section where the fee was included in the policy considerations adopted when the board was appointed to operate the airport and was merely an authorized fee normally enacted by local governing bodies themselves, not by the voters. *Alamo Rent-A-Car, Inc.* v. *Board of Supervisors,* 221 Cal.App.3d 198. Fees based upon square footage, assessed against new developments, and reasonably related to the cost of providing increased services to new developments were not included within the definition of a special tax. *Shapell Industries, Inc.* v. *Governing Board,* 1 Cal.App.4th 218.

Tax Override Elections.—School districts are ''special districts'' within the meaning of this section, and while school districts were specifically empowered under former Education Code Section 42244 to conduct tax override elections and, if successful, to levy ad valorem property taxes, because the taxes authorized were taxes on real property this section in effect disallowed past and future increases in the revenue limit established by the state pursuant to former Section 42244. *Arvin Union School District* v. *Ross,* 176 Cal.App.3d 189.

Documentary Transfer Tax.—An increase in this tax, which goes into the general fund, is not prohibited by this section because this tax is a general tax. *Cohn* v. *City of Oakland,* 223 Cal.App.3d 261. This section does not prohibit the enactment of or increase in a real property transfer tax when the tax is a general, rather than a specific, tax. Furthermore, a transfer tax attaches to the privilege of exercising one of the incidents of property ownership, its conveyance. Such a tax is an excise tax, rather than a property tax, imposed solely on the privilege of disposing of one's property and realizing its actual value. *Fielder* v. *City of Los Angeles,* 14 Cal.App.4th 137; *Fisher* v. *Alameda County,* 20 Cal.App.4th 120.

Documentary Transfer Tax Revenues.—This section did not prohibit a city incorporated after the effective date thereof and complying with the requirements of Revenue and Taxation Code Section 11911 from sharing in documentary transfer tax revenues collected by the county. The sharing of revenues did not create a new or additional tax in violation of Article XIII A, which did not pertain to the allocation of existing tax revenues. *City of Cathedral City* v. *Riverside County,* 163 Cal.App.3d 960.

SEC. 5. **Effective dates.** This article shall take effect for the tax year beginning on July 1 following the passage of this amendment, except Section 3 which shall become effective upon the passage of this article.

SEC. 6. **Provisions severable.** If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

ARTICLE XIII B

CONSTITUTION GOVERNMENT SPENDING LIMITATION

[Sections 1 through 11 added by amendment adopted November 6, 1979.]

SECTION. 1. **Total annual appropriations; limitation.** The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

History.—The amendment of June 5, 1990, substituted "the" for "such" after "limit of", substituted "the change" for "changes" after "adjusted for", added "the change in" before and a comma after "population", and substituted "article" for "Article".

Construction.—This article does no more than place a ceiling on the expenditure of general state and local tax revenues and does not encompass special assessments and federal grants for the financing of the cost of acquisitions and construction of improvements in a sewer assessment district. *Placer County* v. *Corin,* 113 Cal.App.3d 443. This article does not limit the ability to expend government funds collected from all sources. With respect to local governmental entities, limits are placed only on the authorization to expend the proceeds of taxes levied by or for that entity, in addition to proceeds of state subventions. *Oildale Mutual Water Co.* v. *North of the River Mun. Water Dist.,* 215 Cal.App.3d 1628. This Article does not violate the prohibition against impairment of contracts relating to a local government's retirement obligations. Although Section 5 includes contributions to retirement funds within the limitations, this Article does not repudiate or even modify any contractual right or obligation. *San Francisco Taxpayers Assn.* v. *Board of Supervisors,* 2 Cal.4th 571.

The purpose of this article is to hold government expenditures at their 1978–79 level, adjusted for changes in the cost of living, population and transfers of responsibilities from one entity of government to another. The subsequent enactment of Health and Safety Code Section 33678 is not violative of such purpose. *Brown* v. *Community Redevelopment Agency,* 168 Cal.App.3d 1014.

Transit fees imposed on developers of new office buildings as a condition of issuance of certificates of completion and occupancy are not ''proceeds of taxes'' within the meaning of this article since the fee was not a special tax within the meaning of Article XIII A, Section 4 of the Constitution and was not within the ambit of Article XIII A. *Russ Building Partnership* v. *San Francisco,* 199 Cal.App.3d 1496; *Pacific Gateway Assoc. Joint Venture* v. *San Francisco,* 199 Cal.App.3d 1496; *Crocker National Bank* v. *San Francisco,* 199 Cal.App.3d 1496. If a fee is not a special tax within the meaning of Article XIII A, it is not the type of revenue intended to be controlled by Article XIII B. *Trend Homes, Inc.* v. *Central Unified School District,* 220 Cal.App.3d 102.

Payment of Money Judgments.—The initiative limitations on taxing and spending contained in Article XIII A, Article XIII B, and Article XIII C do not preclude judicial enforcement by writ of mandate of a judgment imposing inverse condemnation liability, an obligation imposed by statutory law. Payment of such a judgment does not implement a municipal ''purpose'' within the meaning of the Articles' provisions; rather, such payment acts solely to vindicate the constitutional rights of the landowner. *F & L Farm Co.* v. *City Council of the City of Lindsay,* 65 Cal.App.4th 1345. This article prohibits a county from levying property taxes in excess of 1 percent to pay a money judgment under Harbors and Navigation Code Section 6361 and Government Code Sections 970 through 971. Although Section 6361 authorizes a board of supervisors to levy a special tax sufficient to meet a port district's annual estimate of the amount of money it will need ''for all purposes,'' that statute has been superseded by the statutes implementing Proposition 13 insofar as they are inconsistent. Formulae for the distribution of tax funds to local agencies and districts have been enacted by the Legislature (Rev. & Tax. Code, Sec. 93 et seq.), and a district can no longer expect a county to levy taxes to raise whatever sum the district budget calls for. (Disapproving *F & L Farm Co.* v. *City Council,* 65 Cal.App.4th 1345 to the extent it holds to the contrary.) *Ventura Group Ventures, Inc.* v. *Ventura Port District,* 24 Cal.4th 1089.

SEC. 1.5. **Review of annual calculation.** The annual calculation of the appropriations limit under this article for each entity of local government shall be reviewed as part of an annual financial audit.

History.—New section added by amendment adopted June 5, 1990.

Recalculation.—A county board of supervisors' act of recalculating its appropriations limit and thereby increasing it was legal and statutorily authorized by Government Code Section 7910 where another proper accounting method for calculating the limit was used. That it was done by resolution was immaterial, since it was in substance and effect an ordinance. *Santa Barbara County Taxpayers Ass'n.* v. *Board of Supervisors,* 209 Cal.App.3d 940.

SEC. 2. **Return of excess revenues.** (a) (1) Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(b) All revenues received by an entity of government other than the state, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

History.—The amendment of November 8, 1988, added subdivision letter (a) and subdivision (a); added subdivision letter (b) and moved former paragraph of this section to subdivision (b); and substituted "except as provided in subdivision (a) of this section, revenues" for "Revenues" before "received" in subdivision (b). The amendment of June 5, 1990, added subsection number (1) and subdivision (a)(1); added subsection number (2) and moved former subdivision (a) to subdivision (a)(2); substituted "fifty percent of all" for "All" before "revenues", added "in a fiscal year and in the fiscal year immediately following it" after "state", substituted "the" for "that" after "excess of", substituted "may be" for "is" after "which", substituted "article during that fiscal year and the fiscal year immediately following it shall" for "Article, and which would otherwise be required, pursuant to subdivision (b) of this Section, to" after "with this", and deleted ", shall be transferred and allocated pursuant to Section 8.5 of Article XVI up to the maximum amount permitted by that section" after "fiscal years" in subdivision (a)(2); and substituted "All" for "Except as provided in subdivision (a) of this Section" before "revenues", substituted "an" for "any" after "received by", added "other than . . . following it" after "government,", substituted "the" for "that" after "excess of", substituted "may be" for "is" after "which", substituted "the" for "such" after "appropriated by", substituted "article" for "Article" after "this", substituted "that" for "the" after "during", and added "and the fiscal year immediately following it" after "that fiscal year" in subdivision (b).

Construction.—This section was designed to provide discipline in government spending by requiring the return of excess revenue. It applies, however, only to governmental entities that lawfully obtain tax receipts; it does not apply where a governmental entity that obtained tax receipts never had a lawful right to obtain them. *Rider* v. *San Diego County,* 11 Cal.App.4th 1410.

SEC. 3. **Adjustment of appropriations limit.** The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said

entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c) (1) In the event an emergency is declared by the legislative body of an entity of government the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, ''emergency'' means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the state, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.

History.—The amendment of June 5, 1990, added subsection number (1), deleted "of" after "event", added "is declared . . . of government", after "emergency", substituted "appropriations" for "appropriation" twice, and added "of the affected entity of government" after "limit" in subsection (1) of subdivision (c) and added subsection (2) of subdivision (c).

Construction.—A sales and use tax ordinance adopted by a redevelopment agency did not violate this Article because there was a transfer of financial responsibility to the agency within the meaning of this section and Health and Safety Code Section 33678. *Huntington Park Redevelopment Agency* v. *Martin,* 38 Cal.3d 100.

SEC. 4. **Establishment or change of appropriations limit.** The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change.

SEC. 5. **Contingency, etc., funds.** Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation.

Construction.—A county could not exclude from its annual appropriations contributions to its employees' retirement fund, since they did not constitute excludable debt service within the meaning of Article XIII A, Section 1 and Section 9 of this Article. The specific language of this section stating that the contributions are subject to the limit prevails over the general provisions, since that interpretation accomplishes this Article's purposes of limiting the growth of appropriations and the expenditure of taxes. Also, the county could not exclude such contributions because the retirement board to which the contributions were made was totally distinct from the county. The section specifically deems the contributions as subject to limitation. Also, the section is not to be applied prospectively for purposes of determining whether an entity's contributions to its employees' retirement fund are subject to the limitation. "Each entity of government may establish such . . . retirement . . . funds", when viewed in the context of the entire provision, merely restates existing law and specifically identifies those funds to which contributions are subject to the limitation. *Santa Barbara County Taxpayers Assn.* v. *Santa Barbara County,* 194 Cal.App.3d 674; *San Francisco Taxpayers Assn.* v. *Board of Supervisors,* 2 Cal.4th 571.

Retirement.—The word "retirement" in the section does not refer to the retirement of debt. *Santa Barbara County Taxpayers Assn.* v. *Santa Barbara County,* 194 Cal.App.3d 674.

SEC. 5.5. **Prudent state reserve.** The Legislature shall establish a prudent state reserve fund in such an amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article.

History.—New section added by amendment adopted November 8, 1988.

SEC. 6. **State subvention of funds.** Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Construction.—The purpose of this section is to preclude the State from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill-equipped to assume increased financial responsibilities because of the taxing and spending limitations imposed by Articles XIII A and XIII B of the California Constitution. *San Diego County* v. *State of California,*15 Cal.4th 68. The goal of Articles XIII A and XIII B of the California Constitution is to protect California residents from excessive taxation and government spending. A central purpose of this section of Article XIII B is to prevent the State's transfer of the cost of government from itself to the local level. *Redevelopment Agency* v. *Commission on State Mandates,* 55 Cal.App.4th 976. Proper construction of provision that reimbursement of local governments was required for any "new program or higher level of service" mandated by the state, but permissive for legislative mandates enacted prior to January 1, 1975, effective on July 1, 1980, was, for legislative mandates enacted between January 1, 1975, and July 1, 1980, that reimbursement was required but did not have to begin until the statute's effective date. *City of Sacramento* v. *State of California,* 156 Cal.App.3d 182. Local governments are not entitled to reimbursement for all increased costs mandated by state law, only for those costs resulting from a new program or an increased level of service imposed upon them by the state. *City of Richmond* v. *Commission on State Mandates,* 64 Cal.App.4th 1190. Costs incurred in providing state-mandated increases in unemployment insurance benefits but not reimbursed cannot be recaptured by judicial action. This section does not authorize courts to act if the Legislature fails to appropriate funds, and to order the Legislature to appropriate funds would constitute an unlawful judicial usurpation of the Legislature's exclusive power and discretion to appropriate state money. *City of Sacramento* v. *California State Legislature,* 187 Cal.App.3d 393. A "new program", for purposes of determining whether the program is subject to subvention under this section, is one which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Thus, costs incurred in providing state-mandated increases in workers' compensation benefits are not reimbursable under this section since workers' compensation is not a program administered by local agencies to provide service to the public. *Los Angeles County* v. *State of California,* 43 Cal.3d 46. Costs incurred as the result of increased employer contribution rates to the Public Employees' Retirement System, attributable to transfers of reserve funds to a special temporary benefits fund pursuant to an act of the Legislature, are not reimbursable under this section. Bearing costs of employment is not a "service" that the city is required by state law to provide in its governmental function. *City of Anaheim* v. *State of California,* 189 Cal.App.3d 1478. Legislation defining a new crime

or changing the definition of an existing crime is expressly excluded from the operation of this section by subdivision (b) thereof. *Contra Costa County* v. *State of California,* 177 Cal.App.3d 62. Statute authorizing counties to seek reimbursement from cities and other local entities for costs of booking into county jails persons who had been arrested by employees of the cities and the other entities does not establish a new program or higher level of service and does not shift costs so as to constitute a state ''mandate'' within the meaning of this section. *City of San Jose* v. *State of California,* 45 Cal.App.4th 1802. Legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) did not constitute a reimbursable state mandate under this section. A utilization of local property taxes in support of schools and community colleges was not a new program imposed by the state. Rather, the legislation was, in part, an exercise of the Legislature's authority to apportion property tax revenues. *City of El Monte* v. *Commission on State Mandates,* 83 Cal.App.4th 266.

State executive orders requiring provision of protective clothing and equipment to county fire fighters constitute the type of ''new program'' that is subject to subvention. Fire protection is a peculiarly governmental function; and the orders manifested a state policy, imposed unique requirements on local governments, and applied only to those involved in fire fighting. *Carmel Valley Fire Protection District* v. *State of California,* 190 Cal.App.3d 521. A school district was entitled to reimbursement pursuant to this section for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since an executive order, in the form of State Department of Education regulations, required a higher level of service and constituted a state mandate. The requirements of the order went beyond constitutional and case law requirements in that they required specific actions to alleviate segregation. *Long Beach Unified School District* v. *State of California,* 225 Cal.App.3d 155. To the extent the state implemented the 1975 amendments to the federal Education of the Handicapped Act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs therefor were state mandated and subject to subvention under this section. *Hayes* v. *Commission on State Mandates,* 11 Cal.App.4th 1564. The Legislature's 1982 exclusion of medically indigent adults from the Medi-Cal program resulted in the transfer of responsibility for providing health care for such persons to counties and, thereby, mandated a reimbursable new program under this section. Although the counties had originally shared Medi-Cal costs with the State, in 1979 the State permanently assumed the counties' share and, therefore, the subsequent shifting of the entire cost of health care for medically indigent adults to the counties in 1982 constituted a new program. Furthermore, the counties did not have discretion to deny eligibility or provision of services but instead were obligated by State law to provide a minimal standard of health care to persons whose eligibility was established by statute. *San Diego County* v. *State of California,*15 Cal.4th 68.

In a class action by a city on behalf of all local governments in the state against the state, in which it was alleged that Stats. 1978, Ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, mandated a new program or higher level of service on local agencies for which reimbursement by the state was required under Article XIII B, the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing such coverage were not subject to subvention under Article XIII B or parallel statutes. The state had not compelled provision of new or increased ''service to the public'' at the local level, nor had it imposed a state policy ''uniquely'' on local governments. *City of Sacramento* v. *State of California*, 50 Cal.3d 51. The requirements of Penal Code Section 987.9, funding by court for defense preparation for indigent defendants in capital cases, are not state mandated since, even in the absence of statute, counties would be responsible for providing services under federal constitutional guarantees. And even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate. If a local entity has alternatives under the statutes other than the mandated contribution, that contribution does not constitute a state mandate. *Los Angeles County* v. *Commission on State Mandates*, 32 Cal.App.4th 805. State is not required by this section to reimburse county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Safety Code, Section 25500 et seq.) where county had the authority to charge fees to pay for the program. State is not required to reimburse water districts for costs incurred as the result of a statewide regulatory amendment which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, where the water districts have the authority (Water Code Section 35470) to levy fees to pay for the program. *Connell* v. *Superior Court,* 59 Cal.App.4th 382. Government Code Section 17556(d), which provides that costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program, is constitutional. *Fresno County* v. *State of California,* 53 Cal.3d 482.

Government Code Section 17556(d), which provided that a cost was not mandated by the state where a local agency or school district has authority to levy fees sufficient to pay for a mandated program, did not conflict with this section, since nothing in the constitutional provision precluded the Legislature from enlarging the exceptions consistent with the initiative's purpose, and the ballot material available to the voters indicated that user fees were not within the scope of the initiative. *San Bernardino County* v. *State of California,* 227 Cal.App.3d 1115. Administrative procedures established by the Legislature in Government Code Section 17500 et seq., which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under this section are to be determined and enforced. Because the right involved is given by the Constitution to local agencies and school districts, not individuals either as taxpayers or as recipients of government benefits and services, the statutory scheme adequately implements the section and, as enacted, does not encompass individuals. *Kinlaw* v. *State of California,* 54 Cal.3d 326.

School districts seeking reimbursement for costs of a state mandated desegregation program waived their nonstatutory remedy for reimbursement of their costs incurred after the Legislature deleted funds in a claims bill to pay for the costs, since their statutory cause of action under Government Code Section 17612 accrued on that date and they could have avoided the imposition of state-mandated costs at any time after that cause of action accrued by timely use of the statutory remedy. *Berkeley Unified School District* v. *State of California*, 33 Cal.App.4th 350.

Judicial review.—The question of whether a law is a state-mandated program or higher level of service under this section is a question of law that is reviewed de novo. *City of Richmond* v. *Commission on State Mandates,* 64 Cal.App.4th 1190.

Legislative Counsel's analysis.—The Legislature has authorized the Commission on State Mandates, subject to judicial review, to determine what constitutes a state mandate. The initial determination by Legislature Counsel in a bill analysis is not binding on the Commission. *City of Richmond* v. *Commission on State Mandates,* 64 Cal.App.4th 1190.

Educational Revenue Augmentation Funds.—The 1992 legislation which reduced property taxes previously allocated to local governments and simultaneously placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF's) for distribution to school districts did not entitle counties to reimbursement under this section, since the legislation did not amount to the imposition of a state-mandated program or higher level of service. The legislation did not result in increased actual expenditures, and this section is expressly concerned with ''costs'' incurred by local government as a result of state-mandated programs. No duty of subvention is triggered where the local agency is not required to expend its tax proceeds.

Also, Proposition 98, which amended Article XVI, Section 8 of the Constitution to provide a minimum level of funding for schools, conferred no right of subvention on counties so as to require reimbursement under this section. It merely provides the formula for determining the minimum to be appropriated every budget year. Proposition 98 does not appropriate funds or result in some mandated county program or higher level of service that the counties had not previously supported through property tax allocations. The power to appropriate funds was left in the hands of the Legislature. *Sonoma County* v. *Commission on State Mandates,* 84 Cal.App.4th 1264.

Tax Revenues.—Although this section does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of the section demonstrates that it applies only to costs recovered solely from tax revenues, which revenues do not include tax increment financing. *Redevelopment Agency* v. *Commission on State Mandates,* 55 Cal.App.4th 976.

SEC. 7. **Bonded indebtedness.** Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness.

Construction.—A redevelopment agency's tax allocation bonds constitute ''bonded indebtedness'' exempt under this section from the strictures of this article. *Bell Community Redevelopment Agency* v. *Woosley,* 169 Cal.App.3d 24.

SEC. 8. **Definitions.** As used in this article and except as otherwise expressly provided herein:

(a) ''Appropriations subject to limitation'' of the state means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the state, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6) and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) ''Appropriations subject to limitation'' of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) ''Proceeds of taxes'' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, ''proceeds of taxes'' shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions.

(d) ''Local government'' means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.

(e) (1) ''Change in the cost of living'' for the state, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) ''Change in the cost of living'' for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) ''Change in population'' of any entity of government, other than the state, a school district or a community college district shall be determined by a method prescribed by the Legislature.

''Change in population'' of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

''Change in population'' of the state shall be determined by adding (1) the percentage change in the state's population multiplied by the percentage of the state's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the community colleges, multiplied by the percentage of the state's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) ''Debt service'' means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The ''appropriations limit'' of each entity of government for each fiscal year is that amount which total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the ''appropriations limit'' of each entity of government for fiscal year 1978–79 is the total of the appropriations subject to limitation of the entity for that fiscal year. For fiscal year 1978–79, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, ''appropriations subject to limitation'' do not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

History.—The amendment of June 5, 1990, substituted "article" for "Article" after "this" in the first sentence; substituted "means" for "shall mean" after "state", deleted "of this Article" after "Section 6", added a comma after "unemployment insurance", and substituted a period for a semicolon after "insurance funds" in subdivision (a); substituted "means" for "shall mean" after "government", deleted "of this Article" after "Section 6", and substituted a period for a semicolon after "taxes" in subdivision (b); substituted "(1) for "(i)" after "from", substituted "those" for "such" after "that", substituted "that" for "such" after "by", and substituted "(2)" for "(ii)" after "and" in the first sentence, and deleted "of this Article" after "Section 6" and substituted a period for a semicolon after "subventions" in the second sentence in subdivision (c); substituted "means" for "shall mean" after " 'Local government' " and substituted a period for a semicolon after "state" in subdivision (d); added subsection number (1), added "Change in the" before " 'Cost of living' ", substituted "cost" for "Cost", substituted "for the state, a school district, or a community college district means the percentage" for "shall mean the Consumer Price Index for the United States as reported by the United States Department of Labor, or successor agency of the United States Government; provided, however, that for purposes of Section 1, the change in cost of living from the preceding year shall in no event exceed the" after "living", substituted "the" for "said" after "from", and substituted a period for a semicolon after "year" in subdivision (e)(1); added subsection (2) of subdivision (e); substituted " 'Change in population' " for " 'Population' " before "of any", added "the state, after "other than", added "or a community college district," after "school district," and deleted ", provided that such determination shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor agency of the United States Government" after "Legislature" in the first paragraph of subdivision (f); created a new second paragraph from the former second sentence of subdivision (f), and substituted " 'Change in population' " for "The population", substituted "a" for "any" after "of", added "or a community college district" after "school district", substituted "the percentage change in the" for "such school district's" after "shall be", added "of the school district . . . fiscal year," after "attendance", and substituted a period for a semicolon after "Legislature" therein; added the third and fourth paragraphs of subdivision (f); substituted "means" for "shall mean" after " 'debt service' ", added a comma after "1979", and substituted "that" for "such" after "election for" in subdivision (g); substituted "is" for "shall be" after "fiscal year", substituted "Sections" for "Section" after "under", deleted "Section" after "and", and deleted "; provided" after "3" in the first sentence, substituted "However" for "however", deleted "that" after "However," substituted "is" for "shall be" after "1978–79", substituted "the" for "such" after "limitation of" in the new second sentence, and substituted "are" for "shall be" after "grants," in the third sentence of subdivision (h); and substituted "do" for "shall" after "limitation' " in subdivision (i).

Construction.—The appropriations limit herein is based on ''appropriations subject to limitation,'' which consists primarily of the authorization to expend during a fiscal year the ''proceeds of taxes''. As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by the local government, in addition to proceeds of state subventions; no limitation is placed on the expenditure of those revenues that do not constitute ''proceeds of taxes''. *Placer County* v. *Corin,* 113 Cal.App.3d 443. Special assessments levied for maintaining landscaped median islands on public streets within maintenance district, assessed on a ''pro-rata'' rather than ad valorem basis, do not constitute ''proceeds of taxes''. *City Council of the City of San Jose* v. *South,* 146 Cal.App.3d 320. The increment financing in conjunction with a redevelopment agency's proposed bond issue is not an ''appropriation subject to limitation'' as defined in this section. *Bell Community Redevelopment Agency* v. *Woosley,* 169 Cal.App.3d 24. Subvention is required only when the costs can be recovered solely from proceeds of taxes (subdivision (c)), and pursuant to Health and Safety Code Section 33678, a redevelopment agency's tax increment may not be deemed to be the proceeds of taxes within the meaning of Article XIII B of the California Constitution. *City of El Monte* v. *Commission on State Mandates,* 83 Cal.App.4th 266.

SEC. 9. **"Appropriations subject to limitation"; exclusions.** ''Appropriations subject to limitation'' for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977–78 fiscal year levy an ad valorem tax on property in excess of 12½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents ($0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990.

History.—The amendment of June 5, 1990, substituted "do" for "shall" after "government" in the first sentence, added "Appropriations for" after "(a)" in subdivision (a), substituted "to comply" for "for purposes of complying" after "required" and substituted "provision" for "providing" after "make the" in subdivision (b), and added subdivisions (d) and (e).

Federal mandate.—Stats. 1978, Ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, implemented a federal "mandate" within the meaning of Article XIII B and prior statutes restricting local taxation, and thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stat. 1978, Ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. *City of Sacramento* v. *State of California*, 50 Cal.3d 51.

SEC. 10. **Effective date.** This Article shall be effective commencing with the first day of the fiscal year following its adoption.

SEC. 10.5. **Appropriations limit.** For fiscal years beginning on or after July 1, 1990, the appropriations limit of each entity of government shall be the appropriations limit for the 1986–87 fiscal year adjusted for the changes made from that fiscal year pursuant to this article, as amended by the measure adding this section, adjusted for the changes required by Section 3.

History.—New section added by amendment adopted June 5, 1990.

SEC. 11. **Adjustment of appropriations limit; provisions severable.** If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect.

SEC. 12. **Exceptions to appropriations subject to limitations.** "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988.

History.—New section added by amendment adopted November 8, 1988.

ARTICLE XIII C

VOTER APPROVAL FOR LOCAL TAX LEVIES

[Sections 1 through 3 adopted November 5, 1996.]

SECTION 1. **Definitions.** As used in this article:

(a) ''General tax'' means any tax imposed for general governmental purposes.

(b) ''Local government'' means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) ''Special district'' means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) ''Special tax'' means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

Construction.—Article XIII C does not apply to charges imposed for water services in the city. Water usage rates are basically commodity charges. *Howard Jarvis Taxpayers' Assn.* v. *City of Los Angeles,* 85 Cal.App.4th 79.

Special Tax.—A city's business improvement district assessment imposed on businesses by a city ordinance pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code Section 36500 et. seq., is not a special tax within the meaning of Article XIII C and Article XIII D. *Howard Jarvis Taxpayers' Assn.* v. *City of San Diego,* 72 Cal.App.4th 230.

SEC. 2. **Local government tax limitation.** Notwithstanding any other provision of this Constitution. (a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-

thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

Payment of Money Judgments.—The initiative limitations on taxing and spending contained in Article XIII A, Article XIII B, and Article XIII C do not preclude judicial enforcement by writ of mandate of a judgment imposing inverse condemnation liability, an obligation imposed by statutory law. Payment of such a judgment does not implement a municipal "purpose" within the meaning of the Articles' provisions; rather, such payment acts solely to vindicate the constitutional rights of the landowner. *F & L Farm Co.* v. *City Council of the City of Lindsay,* 65 Cal.App.4th 1345. This article prohibits a county from levying property taxes in excess of 1 percent to pay a money judgment under Harbors and Navigation Code Section 6361 and Government Code Sections 970 through 971. Although Section 6361 authorizes a board of supervisors to levy a special tax sufficient to meet a port district's annual estimate of the amount of money it will need "for all purposes," that statute has been superseded by the statutes implementing Proposition 13 insofar as they are inconsistent. Formulae for the distribution of tax funds to local agencies and districts have been enacted by the Legislature (Rev. & Tax. Code, Sec. 93 et seq.), and a district can no longer expect a county to levy taxes to raise whatever sum the district budget calls for. (Disapproving *F & L Farm Co.* v. *City Council,* 65 Cal.App.4th 1345 to the extent it holds to the contrary.) *Ventura Group Ventures, Inc.* v. *Ventura Port District,* 24 Cal.4th 1089.

SEC. 3. **Initiative power for local taxes, assessments, fees and charges.** Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

ARTICLE XIII D

ASSESSMENT AND PROPERTY-RELATED FEE REFORM

[Sections 1 through 6 added by amendments adopted November 5, 1996.]

SECTION. 1. **Application.** Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

SEC. 2. **Definitions.** As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) ''Assessment'' means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. ''Assessment'' includes, but is not limited to, ''special assessment,'' ''benefit assessment,'' ''maintenance assessment'' and ''special assessment tax.''

(c) ''Capital cost'' means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) ''District'' means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) ''Fee'' or ''charge'' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) ''Maintenance and operation expenses'' means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) ''Property ownership'' shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) ''Property-related service'' means a public service having a direct relationship to property ownership.

(i) ''Special benefit'' means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute ''special benefit.''

Assessment.—A city's business improvement district assessment imposed on businesses pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code Section 36500 et. seq., is not an assessment within the meaning of Article XIII C and Article XIII D. The definition of ''assessment'' in subdivision (b) unambiguously applies only to levies upon real property, and the assessment at issue was not imposed upon real property but upon businesses. *Howard Jarvis Taxpayers' Assn.* v. *City of San Diego,* 72 Cal.App.4th 230.

Commodity Charges.—Water usage rates are basically commodity charges that do not fall within the scope of Article XIII C and Article XIII D. They do not constitute ''fees'' as defined in this section because they are not levies or assessments ''incident of property ownership.'' Nor are they fees for a ''property-related service,'' defined in subdivision (h) as ''a public service having a direct relationship to property ownership.'' *Howard Jarvis Taxpayers' Assn.* v. *City of Los Angeles,* 85 Cal.App.4th 79.

Inspection Fee.—An inspection fee imposed upon landlords in their capacity as business owners, not in their capacity as landowners, does not fall within the scope of this article, which applies only to exactions levied solely by virtue of property ownership. *Apartment Assn. of Los Angeles County, Inc.* v. *City of Los Angeles,* 24 Cal.4th 830.

SEC. 3. **Property taxes, assessments, fees and charges limited.** (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Construction.—A port district cannot impose an assessment to raise funds under Harbors and Navigation Code Section 6365 to satisfy a judgment obtained against it, since the district's assessment would not specially benefit the parcels upon which it would be imposed. Subdivision (a) provides that an assessment may not exceed the reasonable cost of the proportional special benefit conferred on the parcel, and that only special benefits are assessable. *Ventura Group Ventures, Inc.* v. *Ventura Port District,* 24 Cal.4th 1089.

Inspection Fee.—An inspection fee imposed upon landlords in their capacity as business owners, not in their capacity as landowners, does not fall within the scope of this article, which applies only to exactions levied solely by virtue of property ownership. *Apartment Assn. of Los Angeles County, Inc.* v. *City of Los Angeles,* 24 Cal.4th 830.

SEC. 4. **Procedures and requirements for all assessments.** (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the

notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

SEC. 5. **Effective date.** Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

Construction.—An annual streetlighting assessment levied by a city's streetlight assessment district, in existence on the effective date of Article XIIID, came within the subdivision (a) exemption for streets and sidewalks, one of the four specified classes of pre-existing assessments exempted from the procedures and approval process set forth in Article XIIID, Section 4. *Howard Jarvis Taxpayers' Assn.* v. *City of Riverside,* 73 Cal.App.4th 679. A pre-existing standby charge on all property capable of receiving water from the district came within the subdivision (a) exemption for water. *Keller* v. *Chowchilla Water District,* 80 Cal.App.4th 1006.

SEC. 6. **Property-related fees and charges.** (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not

permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

Construction.—The plain language of subdivision (c) of this section specifically excludes charges for water. *Howard Jarvis Taxpayers' Assn.* v. *City of Los Angeles,* 85 Cal.App.4th 79.

ARTICLE XVI

Public Finance

§ 16. Taxation of redevelopment projects.

Sec. 16. **Taxation of redevelopment projects.** All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and those taxes (the word ''taxes'' as used herein includes, but is not limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called ''taxing agencies'') after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of those taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for those taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which the territory has been annexed or otherwise included after the ordinance's effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

(b) Except as provided in subdivision (c), that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in the project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid

into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) That portion of the taxes identified in subdivision (b) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This paragraph shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes identified in subdivision (b), exclusive of that portion identified in subdivision (c), may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

The Legislature shall enact those laws as may be necessary to enforce the provisions of this section.

History.—New section added by amendment adopted November 5, 1974, which also repealed former Section 19 of Article XIII containing similar provisions. The amendment of November 8, 1988, substituted "the", "those", and "that" for "such" and made grammatical changes throughout the section; added "Except as provided in subdivision (c)" at the beginning of subdivision (b); added subdivision (c); and added ", exclusive of that portion identified in the first sentence of subdivision (c)," after "subdivision (b)" in the paragraph following subdivision (c).

Construction.—Article XIII B of the Constitution, which limits state and local government appropriations, is not applicable to this section, and Health and Safety Code Section 33678 is a valid legislative interpretation thereof. *Brown* v. *Community Redevelopment Agency,* 168 Cal.App.3d 1014; *Bell Community Redevelopment Agency* v. *Woosley,* 169 Cal.App.3d 24. The mandatory language in the first paragraph not only gives the Legislature the authority but also requires it to treat community redevelopment property like other property for purposes of levying and collecting property taxes. It does not prevent the Legislature from altering the levying and collection of taxes on redevelopment property in a manner consistent with which it alters the levying and collection of taxation on other property. *Arcadia Redevelopment Agency* v. *Ikemoto,* 16 Cal.App.4th 444; *Community Redevelopment Agency* v. *Los Angeles County,* 89 Cal.App.4th 719. A redevelopment agency is entitled to all tax increment funds as they become available, until its loans, advances and indebtedness, if any, and interest thereon have been paid. Since redevelopment agencies are statutorily empowered to enter into binding contracts to complete redevelopment projects, ''indebtedness'' includes all redevelopment obligations, whether pursuant to an executory contract, a performed contract, or to repay principal and interest on bonds or loans. *Marek* v. *Napa Community Redevelopment Agency,* 46 Cal.3d 1070.

Last Equalized Assessment Roll.—The proper base roll to be used when dividing property tax revenues between taxing agencies and a redevelopment agency is the assessment roll prepared annually and which becomes the last equalized roll on August 20, not the adjusted assessment roll made later in the tax year as the result of assessment appeals board decisions and after a redevelopment plan ordinance had been adopted. *Redevelopment Agency* v. *Los Angeles County,* 75 Cal.App.4th 68.